**Office of Legislative Legal Services**

Colorado General Assembly

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# Statutory Revision Committee (SRC)

## Thursday, April 11, 2019
## State Capitol, 7:30AM, SCR 352

1. Election of a new chair and vice-chair
2. Presentation of memoranda and draft bills describing potential SRC legislation:
    a. Federal preemption of section 18-13-128, C.R.S.
    ***Drafter: Richard Sweetman***
    b. Correction of cross-reference in the renewable energy standard statute
    ***Drafter: Duane Gall***
    c. Repeal of obsolete language concerning child and youth prevention, intervention, and treatment service programs
    ***Drafter: Kristen Forrestal***
    d. Repeal requirement that each hospital license have the president of the state board of health's signature and the state board of health's seal *(Previously discussed at the 10/23 meeting)*
    ***Drafter: Kristen Forrestal***
    e. Move SRC annual report due date from November to July
    ***Drafter: Kristen Forrestal***

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# MEMORANDUM 2a[1]

TO: Statutory Revision Committee

FROM: Richard Sweetman, Office of Legislative Legal Services

DATE: March 1, 2019

SUBJECT: Federal preemption of section 18-13-128, C.R.S.

## Summary

During the 2006 regular legislative session, the General Assembly enacted Senate Bill 06-206, which created section 18-13-128, C.R.S. This section provides that a person commits a class 3 felony "if, for the purpose of assisting another person to enter, remain in, or travel through the United States or the state of Colorado in violation of immigration laws, he or she provides or agrees to provide transportation to that person in exchange for money or any other thing of value." The section also establishes a class 3 felony for violators.[2]

In *Fuentes-Espinoza v. People*,[3] the Colorado Supreme Court determined that section 18-13-128, C.R.S., is preempted by federal immigration law. The Court's decision renders the section effectively useless to prosecutors.[4]

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[1] This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

[2] See **Addendum A**.

[3] 2017 CO 98, 408 P.3d 445.

[4] See **Addendum B**.

This issue came to the attention of the Office of Legislative Legal Services (OLLS) staff after the Colorado Supreme Court issued its decision.

## Analysis

In 2007, Bernadino Fuentes-Espinoza was arrested in Wheat Ridge, Colorado, after attempting to pass a counterfeit $100 bill to a gas station attendant. When police arrived, they discovered that Fuentes-Espinoza was driving a van full of people, two of whom fled and were not apprehended. It was determined that Fuentes-Espinoza was transporting the passengers from Arizona to Kansas in exchange for $500. He was charged with, and later convicted of, seven counts of human smuggling in violation of section 18-13-128, C.R.S.

Fuentes-Espinoza appealed his convictions, arguing that the federal "Immigration and Nationality Act (INA)," 8 U.S.C. sec. 1101-1537 (2017), preempts section 18-13-128, C.R.S. The Colorado Court of Appeals rejected the preemption argument, concluding that Fuentes-Espinoza could not raise it on appeal because he had not raised it before the trial court. However, the Colorado Supreme Court chose to exercise its discretion to review the argument, and it agreed with Fuentes-Espinoza that the INA preempts section 18-13-128, C.R.S. Accordingly, the Court reversed the convictions on all counts.

The Court began its analysis by noting that the U.S. Supreme Court recognizes three forms of federal preemption: Express, field, and conflict preemption.

***Express preemption*** occurs when Congress "withdraw[s] specified powers from the States by enacting a statute containing an express preemption provision."[5]

***Field preemption*** occurs when "the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance."[6] Congress's intent to preempt a particular field may be inferred "from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'"[7]

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[5] *Id.* (quoting *Arizona v. United States*, 567 U.S. 387, 399 (2012))

[6] *Id.*

[7] *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

***Conflict preemption*** occurs when a state law conflicts with a federal law. Such a conflict exists (1) when compliance with both federal and state law is physically impossible and (2) in "those instances where the challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"[8]

In *Fuentes-Espinoza*, the Court found that Colorado's human smuggling law is preempted under the doctrines of both field and conflict preemption.

As to field preemption, the Court found that the comprehensive nature of the INA demonstrates Congress's intent to "maintain a uniform, federally regulated framework for criminalizing and regulating the transportation, concealment, and inducement of unlawfully present aliens, and this framework is so pervasive that it has left no room for the states to supplement it."[9]

As to conflict preemption, the Court found that Colorado's human smuggling law "stands as an obstacle to the accomplishment and execution of Congress's purposes and objectives in enacting the INA" because the law (1) conflicts with the "careful calibration" of the INA's penalty scheme and (2) "sweeps more broadly" than the INA by criminalizing a wider range of conduct. "In doing so," said the Court, "the Colorado statute disrupts Congress's objective of creating a uniform scheme of punishment because some human smuggling activities . . . are punishable in Colorado but not elsewhere."[10]

## Statutory Charge[11]

Because the Colorado Supreme Court has determined that section 18-13-128, C.R.S., is preempted by federal law, the section has become a defect in the law. Therefore, this issue fits under this Committee's statutory charge of "discovering

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[8] *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

[9] *Id.*

[10] *Id.*

[11] The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

defects and anachronisms in the law and recommending needed reforms," pursuant to section 2-3-902 (1)(a), C.R.S.

## Proposed Bill

If the Statutory Revision Committee directs the Office of Legislative Legal Services to prepare a bill draft to address this defect in the law, the draft would simply repeal section 18-13-128, C.R.S., and any existing cross-references to this section.

# ADDENDUM A

**18-13-128. Smuggling of humans.** (1) A person commits smuggling of humans if, for the purpose of assisting another person to enter, remain in, or travel through the United States or the state of Colorado in violation of immigration laws, he or she provides or agrees to provide transportation to that person in exchange for money or any other thing of value.

(2) Smuggling of humans is a class 3 felony.

(3) A person commits a separate offense for each person to whom he or she provides or agrees to provide transportation in violation of subsection (1) of this section.

(4) Notwithstanding the provisions of section 18-1-202, smuggling of humans offenses may be tried in any county in the state where a person who is illegally present in the United States who is a subject of the action is found.

**ADDENDUM B**



ADVANCE SHEET HEADNOTE
October 10, 2017

**2017 CO 98**

**No. 13SC128 Fuentes-Espinoza v. People— Alien Smuggling—Field Preemption—Conflict Preemption.**

This case requires the supreme court to determine whether Colorado's human smuggling statute, section 18-13-128, C.R.S. (2017), is preempted by the federal Immigration and Nationality Act, 8 U.S.C. §§ 1101–1537 (2017) ("INA"). The supreme court concludes that the INA preempts section 18-13-128 under the doctrines of both field and conflict preemption.

In reaching this conclusion, the court agrees with a number of federal circuit courts that have reviewed the same INA provisions at issue here and have determined that those provisions create a comprehensive framework to penalize the transportation, concealment, and inducement of unlawfully present aliens and thus evince a congressional intent to occupy the field criminalizing such conduct. In addition, applying the analyses set forth in those federal decisions, the court concludes that section 18-13-128, like the state human smuggling statutes at issue in the federal cases,

stands as an obstacle to the accomplishment and execution of Congress's purposes and objectives in enacting its comprehensive framework.

Accordingly, the supreme court reverses petitioner's judgment of conviction under section 18-13-128.

**The Supreme Court of the State of Colorado**
2 East 14th Avenue • Denver, Colorado 80203

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**2017 CO 98**

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**Supreme Court Case No. 13SC128**
*Certiorari to the Colorado Court of Appeals*
Court of Appeals Case No. 08CA1231

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**Petitioner:**

Bernardino Fuentes-Espinoza,

v.

**Respondent:**

The People of the State of Colorado.

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**Judgment Reversed**
*en banc*
October 10, 2017

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**JUSTICE GABRIEL** delivered the Opinion of the Court.*
**JUSTICE EID** dissents, and **JUSTICE COATS** and **JUSTICE BOATRIGHT** join in the dissent

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* This opinion was originally assigned to another Justice but was reassigned to Justice Gabriel on June 15, 2017.

¶1 In this case, petitioner Bernardino Fuentes-Espinoza challenges his convictions under Colorado's human smuggling statute, section 18-13-128, C.R.S. (2017), on the ground that that statute is preempted by the federal Immigration and Nationality Act, 8 U.S.C. §§ 1101–1537 (2017) ("INA").[1] The court of appeals division below did not consider Fuentes-Espinoza's preemption argument because it was unpreserved. People v. Fuentes-Espinoza, 2013 COA 1, ¶ 16, ___ P.3d ___. We, however, choose to exercise our discretion to review that argument and conclude that the INA preempts section 18-13-128 under the doctrines of both field and conflict preemption.

¶2 In reaching this conclusion, we agree with a number of federal circuit courts that have reviewed the same INA provisions at issue here and have determined that those provisions create a comprehensive framework to penalize the transportation, concealment, and inducement of unlawfully present aliens and thus evince a congressional intent to occupy the field criminalizing such conduct. In addition, applying the analyses set forth in those federal decisions, we conclude that section 18-13-128, like the state human smuggling statutes at issue in the federal cases, stands as

[1] Specifically, we granted certiorari to review the following issues:

1. Whether the Immigration and Nationality Act preempts Colorado's human smuggling statute and the trial court therefore was without jurisdiction.
2. Whether the court of appeals erred in holding that the appellant waived the claim that the Colorado human smuggling statute is preempted by the Federal Immigration and Nationality Act.
3. Whether Colorado's human smuggling statute requires the prosecution to prove that the defendant was, in fact, engaged in smuggling humans in violation of the immigration law.

an obstacle to the accomplishment and execution of Congress's purposes and objectives in enacting its comprehensive framework.

¶3 Accordingly, we reverse the division's judgment and remand this case for further proceedings consistent with this opinion.

## I. Facts and Procedural History

¶4 In 2007, Fuentes-Espinoza was walking along the Las Vegas Strip when an individual approached him and offered him $500 to drive several family members from Phoenix to Kansas. Fuentes-Espinoza accepted the offer, and he and a friend rode to Phoenix with the man who had made the offer. When the group arrived in Phoenix, Fuentes-Espinoza and his friend were dropped off at an apartment, where they waited for the man to return.

¶5 That evening, the man returned with a van full of people. The man gave Fuentes-Espinoza $600 in travel money, as well as a map that had the man's telephone number on it. Fuentes-Espinoza, his friend, and the people in the van then set off on the trip to Kansas.

¶6 En route, Fuentes-Espinoza stopped at a gas station in Wheat Ridge, Colorado to get gas and to repair a broken taillight. As pertinent here, he went into the station to pay and gave the clerk a one-hundred-dollar bill, which apparently had been included in the travel money that Fuentes-Espinoza had received. The clerk determined that the bill was counterfeit and called the police.

¶7 An officer responded to the gas station, and as he approached, two individuals from the van took off running and, apparently, were not apprehended. The officer then

arrived at the station, and after speaking with the clerk, he questioned Fuentes-Espinoza about the counterfeit bill and the people in the van. Fuentes-Espinoza told inconsistent stories about where he had obtained the counterfeit bill and where he was going, and the officer arrested him for passing the bill.

¶8 The officer then spoke with the people in the van and requested identification from them. After doing so, the officer spoke with his supervisor to report on his investigation and to get further instructions. The supervisor told the officer to bring the group to the police station, and the officer did so. The officer then called the human smuggling hotline, and the hotline sent representatives to the station to assist.

¶9 The People ultimately charged Fuentes-Espinoza with one count of forgery (for passing the counterfeit bill) and seven counts of human smuggling in violation of section 18-13-128.

¶10 Under section 18-13-128, a person commits a class 3 felony

> if, for the purpose of assisting another person to enter, remain in, or travel through the United States or the state of Colorado in violation of immigration laws, he or she provides or agrees to provide transportation to that person in exchange for money or any other thing of value.

§ 18-13-128(1), (2). Class 3 felonies carry a presumptive sentencing range of four to twelve years' imprisonment. § 18-1.3-401(1)(a)(V)(A), C.R.S. (2017).

¶11 The case proceeded to trial, and a jury ultimately acquitted Fuentes-Espinoza of forgery but convicted him on each of the human smuggling counts. The court subsequently sentenced him to concurrent four-year terms on each of the seven counts.

¶12 Fuentes-Espinoza appealed, and as pertinent here, he argued for the first time that federal law preempts section 18-13-128. He further asserted that section 18-13-128 required the People to prove that the people he had transported were present in violation of the immigration laws. The division rejected both arguments and, in a split decision, affirmed Fuentes-Espinoza's convictions. Fuentes-Espinoza, ¶¶ 2–3, 61.

¶13 Regarding the preemption issue, the majority concluded that Fuentes-Espinoza's arguments were not properly before the court because Fuentes-Espinoza had not made those arguments before the trial court. Id. at ¶¶ 10–16.

¶14 Regarding the question of what section 18-13-128 required the People to prove, the majority noted that "by including the actor's purpose as an element of the crime, [section 18-13-128] emphasizes the actor's intent, rather than the outcome of his or her actions." Id. at ¶ 30. Thus, in the majority's view, the People were required to prove only that the actor had the purpose of assisting another person to enter, remain in, or travel through the United States or Colorado in violation of immigration laws, and not that the passengers allegedly being smuggled were actually present in the United States or Colorado in violation of those laws. Id. at ¶¶ 27, 39.

¶15 Judge Casebolt dissented. In his view, the division was required to address Fuentes-Espinoza's preemption argument, regardless of whether it was properly preserved, because the argument implicated the court's subject matter jurisdiction. Fuentes-Espinoza, ¶¶ 63–64 (Casebolt, J., dissenting). Alternatively, Judge Casebolt stated that he would review the unpreserved claim for plain error. Id. at ¶¶ 66–67.

¶16 Turning then to the merits of the preemption claim, Judge Casebolt noted that the INA provides "a comprehensive framework to penalize the transportation, concealment, and inducement of unlawfully present aliens." Id. at ¶ 76. In support of this position, he discussed a number of federal circuit court decisions in which the courts had concluded that the INA preempted the state smuggling laws before them under the doctrines of field and conflict preemption. Id. at ¶¶ 76–80. Based on the analyses set forth in those cases, Judge Casebolt concluded that (1) "the INA covers every aspect of the Colorado statute"; (2) in enacting the INA, Congress articulated a "clear purpose of ousting state authority from the field of transporting aliens"; and (3) section 18-13-128 "stands as an obstacle to accomplishing Congress's objective of creating a comprehensive scheme governing the movement and harboring of aliens." Id. at ¶¶ 85–87. Accordingly, he determined that the INA preempted section 18-13-128 under the doctrines of both field and conflict preemption and thus would have reversed Fuentes-Espinoza's conviction. Id. at ¶¶ 82, 91.

¶17 Fuentes-Espinoza then sought, and we granted, certiorari.

## II. Analysis

¶18 We begin by addressing the question of issue preservation and the applicable standard of review. We then discuss the pertinent principles of preemption law, as well as the Supreme Court's decision in Arizona v. United States, 567 U.S. 387 (2012), and other apposite federal authority. Finally, we apply the principles set forth in the foregoing authority and conclude that, like the statutes at issue in those cases, section 18-13-128 is preempted by the INA.

### A. Issue Preservation and Standard of Review

¶19 We have long made clear that we will exercise our discretion to review unpreserved constitutional claims when we believe that doing so would best serve the goals of efficiency and judicial economy. See, e.g., Hinojos-Mendoza v. People, 169 P.3d 662, 667 (Colo. 2007); People v. Wiedemer, 852 P.2d 424, 433 n.9 (Colo. 1993). Because we believe that reviewing Fuentes-Espinoza's unpreserved preemption claim would serve those goals here, we exercise our discretion to do so. As a result, we need not consider whether Fuentes-Espinoza waived that claim.

¶20 The question of whether a federal statute preempts state law presents an issue of law that we review de novo. See, e.g., Russo v. Ballard Med. Prods., 550 F.3d 1004, 1010 (10th Cir. 2008); People in Interest of C.Z., 2015 COA 87, ¶ 10, 360 P.3d 228, 233.

### B. Preemption Principles and Pertinent Case Law

¶21 The Supremacy Clause of the United States Constitution provides that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. As a result, it has long been settled that Congress has the power to preempt state law. Arizona, 567 U.S. at 399.

¶22 In determining whether federal statutes preempt state law, we are "guided by two cornerstones." Ga. Latino All. for Human Rights v. Governor of Ga., 691 F.3d 1250, 1263 (11th Cir. 2012) (quoting Wyeth v. Levine, 555 U.S. 555, 565 (2009)). First, Congress's purpose is the "ultimate touchstone in every pre-emption case." Id. (quoting Wyeth, 555 U.S. at 565). Second, we must presume that "the historic police

powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." Id. (quoting Wyeth, 555 U.S. at 565).

¶23 The United States Supreme Court has recognized three forms of federal preemption, namely, express, field, and conflict preemption. See Arizona, 567 U.S. at 399.

¶24 A state law is expressly preempted when Congress "withdraw[s] specified powers from the States by enacting a statute containing an express preemption provision." Id.

¶25 Under the field preemption doctrine, in turn, "the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." Id. Congress's intent to preempt a particular field may be inferred "from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" Id. (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)).

¶26 Finally, under the conflict preemption doctrine, "state laws are preempted when they conflict with federal law." Id. Such a conflict exists (1) when compliance with both federal and state law is physically impossible and (2) in "those instances where the challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Id. (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

¶27 In Arizona, 567 U.S. at 398–407, the Supreme Court applied the foregoing principles in the context of the federal government's regulation of, among other things, alien registration. That case is instructive here.

¶28 In Arizona, the federal government challenged (1) section 5(C) of an Arizona statute, which section made it a misdemeanor for "an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor," id. at 403 (quoting Ariz. Rev. Stat. Ann. § 13-2928(C) (2017)); and (2) section 3 of the same Arizona statute, which prohibited the "willful failure to complete or carry an alien registration document . . . in violation of [federal law]," id. at 400 (quoting Ariz. Rev. Stat. Ann. § 13-1509(A) (2017)). The Supreme Court concluded that federal law preempted both sections. Id. at 403, 406–07.

¶29 Regarding section 5(C), the Court began by noting that the federal Immigration Reform and Control Act of 1986 ("IRCA"), 8 U.S.C. § 1324a (2017), (1) made it illegal for employers knowingly to hire, recruit, refer, or continue to employ unauthorized workers and (2) required employers to verify the employment authorization status of prospective employees. Arizona, 567 U.S. at 404. The Court observed that IRCA enforced these provisions through criminal or civil penalties on employers but that it imposed no criminal sanctions on employees unless they obtained employment through fraudulent means. Id. at 404–05. Employees were principally subject only to civil penalties. Id. at 404.

¶30 In light of the foregoing, the Court concluded that IRCA preempted section 5(C) because enforcing section 5(C) "would interfere with the careful balance struck by

Congress with respect to unauthorized employment of aliens." Id. at 406. Notably, in reaching this conclusion, the Court recognized that section 5(C) "attempt[ed] to achieve one of the same goals as federal law—the deterrence of unlawful employment." Id. The Court determined, however, that section 5(C) "involve[d] a conflict in the method of enforcement" because it imposed "criminal penalties on aliens who seek or engage in unauthorized employment," whereas IRCA had rejected such penalties. Id. Accordingly, section 5(C) posed "an obstacle to the regulatory system Congress chose" and, consequently, was preempted under the doctrine of conflict preemption. Id. at 406–07.

¶31 The Court then discussed section 3 of the Arizona statute, which, as noted above, prohibited the "willful failure to complete or carry an alien registration document . . . in violation of [federal law]." Id. at 400. The Court held that this section, too, was preempted, based on the fact that Congress "ha[d] occupied the field of alien registration," thus leaving no room for state regulation. Id. at 401.

¶32 In so ruling, the Court rejected Arizona's argument that section 3 was not preempted because "the provision ha[d] the same aim as federal law and adopt[ed] its substantive standards." Id. at 402. In the Court's view, "[p]ermitting the State to impose its own penalties for the federal offenses here would conflict with the careful framework Congress adopted." Id. Moreover, the penalties imposed by the state statute were inconsistent with those provided by federal law. Id. at 402–03. For example, under federal law, the failure to carry registration papers was a misdemeanor that could be punished by a fine, imprisonment, or a term of probation. Id. at 403

(citing 8 U.S.C. § 1304(e) (2017); 18 U.S.C. § 3561 (2017)). The Arizona statute, in contrast, precluded probation as a possible sentence (and also prohibited the possibility of a pardon). Id. (citing Ariz. Rev. Stat. Ann. § 13-1509(D) (2017)). The Court concluded that these conflicts "simply underscore[d] the reason for field preemption." Id.

¶33 Since the Supreme Court's decision in Arizona, a number of federal circuit courts have applied the principles set forth therein to strike down state human smuggling statutes on preemption grounds.

¶34 For example, in Georgia Latino Alliance, 691 F.3d at 1256–57, the plaintiffs challenged several provisions of Georgia's Illegal Immigration and Enforcement Act of 2011. That statute criminalized (1) transporting or moving an "illegal alien," (2) concealing or harboring an "illegal alien," and (3) inducing an "illegal alien" to enter the state of Georgia. Id. at 1263 (citing Ga. Code Ann. §§ 16-11-200(b), 16-11-201(b), 16-11-202(b) (2017)). The Eleventh Circuit concluded that the INA likely preempted each of these provisions. Id. at 1267.

¶35 The court began by noting that "[t]he INA provides a comprehensive framework to penalize the transportation, concealment, and inducement of unlawfully present aliens." Id. Within that framework, 8 U.S.C. § 1324(a)(1)(A)(ii)–(iv) provides that it is a federal crime for any person (1) to transport or move an unlawfully present alien within the United States; (2) to conceal, harbor, or shield an unlawfully present alien from detection; or (3) to encourage or induce an alien to come to, enter, or reside in the United States. Ga. Latino All., 691 F.3d at 1263. In addition, 8 U.S.C. § 1324(c) permits local law enforcement officers to arrest those who violate these provisions of federal

law, but under 8 U.S.C. § 1329, federal courts have exclusive jurisdiction to prosecute these crimes and to interpret the boundaries of the federal statute. Ga. Latino All., 691 F.3d at 1263–64. 8 U.S.C. § 1324(e) then mandates a community outreach program to "educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section." Ga. Latino All., 691 F.3d at 1264. And 8 U.S.C. § 1325 imposes civil and criminal penalties for unlawful entry into the United States, and 8 U.S.C. §§ 1323 and 1328 authorize criminal penalties for individuals who bring aliens into the United States and who import aliens for immoral purposes. Ga. Latino All., 691 F.3d at 1264.

¶36 Construing these provisions together, the Eleventh Circuit concluded that (1) "the federal government has clearly expressed more than a 'peripheral concern' with the entry, movement, and residence of aliens within the United States"; (2) "the breadth of these laws illustrates an overwhelmingly dominant federal interest in the field"; and (3) "Congress has provided a 'full set of standards' to govern the unlawful transport and movement of aliens." Id. (quoting DeCanas v. Bica, 424 U.S. 351, 360 (1976); Arizona, 567 U.S. at 401).

¶37 The court further concluded that the Georgia statute presented an obstacle to the execution of the federal statutory scheme. Id. at 1265. In support of this conclusion, the court observed that the INA confines the prosecution of federal immigration crimes to federal courts and limits the power to pursue those cases to the United States Attorney, whereas the Georgia statute allowed for parallel state enforcement that was "not conditioned on respect for the federal concerns or the priorities that Congress had

explicitly granted executive agencies the authority to establish." Id. This conflict was exacerbated by the fact that the state statute's enticement provision created a new crime that was unparalleled in the federal scheme. Id. at 1266. And, the court noted, the state statute's provisions concerning harboring and transporting unlawfully present aliens constituted an attempted complement to the INA that was "inconsistent with Congress's objective of creating a comprehensive scheme governing the movement of aliens within the United States." Id.

¶38 In light of the foregoing, the court determined that the plaintiffs had met their burden of showing a likelihood of success on their claim that Georgia's statute was preempted by federal law. Id. at 1267; see also United States v. Alabama, 691 F.3d 1269, 1285–88 (11th Cir. 2012) (relying heavily on Georgia Latino Alliance in concluding that the INA preempted a similar Alabama human smuggling provision).

¶39 In United States v. South Carolina, 720 F.3d 518, 530–32 (4th Cir. 2013), the Fourth Circuit reached a similar result in a case involving a South Carolina law making it a felony (1) to "transport, move or attempt to transport" or to "conceal, harbor or shelter" a person "with intent to further that person's unlawful entry into the United States" or (2) to help that person avoid apprehension or detection. The court reasoned that the pertinent sections were preempted under field preemption principles "because the vast array of federal laws and regulations on this subject is 'so pervasive . . . that Congress left no room for the States to supplement it.'" Id. at 531 (quoting Arizona, 567 U.S. at 399). Additionally, the court concluded that the sections were "conflict preempted" because "there is a federal interest . . . so dominant that the federal system

will be assumed to preclude enforcement of state laws on the same subject." Id. (quoting Arizona, 567 U.S. at 399).[2]

¶40 And in Valle del Sol Inc. v. Whiting, 732 F.3d 1006, 1022–29 (9th Cir. 2013), the Ninth Circuit determined that under both field and conflict preemption principles, the INA preempted an Arizona statute that attempted to criminalize transporting, concealing, harboring, or attempting to harbor an unauthorized alien if the offender knew or recklessly disregarded the fact that the person was in the country illegally. Regarding field preemption, the court agreed with the cases discussed above that the breadth of the federal laws governing the movement and harboring of aliens reflects the federal government's overwhelmingly dominant federal interest in that field. Id. at 1026. Regarding conflict preemption, the court concluded that Arizona's statute (1) provided additional and different state penalties for harboring unauthorized aliens than did the INA and thus disrupted Congress's carefully calibrated scheme, (2) divested federal authorities of the exclusive power to prosecute crimes concerning the transportation or harboring of unauthorized aliens, and (3) criminalized conduct not covered by the federal harboring provision. Id. at 1026–28. Accordingly, the Arizona statute stood "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" and therefore was preempted under the conflict preemption doctrine. Id. at 1026, 1029.

[2] We note that the court deemed this a conflict preemption analysis, although Arizona included such an analysis under the rubric of field preemption.

¶41 With the foregoing legal principles and authorities in mind, we turn to the argument now before us.

### C. Application

¶42 Here, Fuentes-Espinoza contends that the INA preempts section 18-13-128 under both field and conflict preemption principles. We agree.

#### 1. Field Preemption

¶43 With respect to field preemption, as noted above, we may infer Congress's intent to preempt a particular field when it has created "a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" Arizona, 567 U.S. at 399 (quoting Rice, 331 U.S. at 230). For several reasons, we conclude that such a framework of regulation and such a federal interest exist here.

¶44 First, we note, as did the Supreme Court in Arizona, 567 U.S. at 394–95, that "[t]he Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens," and "[f]ederal governance of immigration and alien status is extensive and complex."

¶45 Second, we agree with the federal circuit court cases discussed above that the INA established a comprehensive framework for penalizing the transportation, concealment, and inducement of unlawfully present aliens. See Valle del Sol, 732 F.3d at 1026; South Carolina, 720 F.3d at 531; Ga. Latino All., 691 F.3d at 1263.

¶46 For example, 8 U.S.C. § 1324, entitled, "Bringing in and harboring certain aliens," provides:

> [Any person who] knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law [shall be punished as provided in subparagraph (B)].

8 U.S.C. § 1324(a)(1)(A)(ii).

¶47 This statute also (1) criminalizes the aiding or abetting of the above-mentioned conduct, 8 U.S.C. § 1324(a)(1)(A)(v)(II); (2) creates an extensive punishment scheme, see 8 U.S.C. § 1324(a)(1)(B)(i)–(iv); (3) discusses evidentiary considerations for determining whether a violation has occurred, 8 U.S.C. § 1324(b)(3); and (4) mandates the creation of an outreach program to educate the public on the penalties for violations of the foregoing provisions, 8 U.S.C. § 1324(e).

¶48 In addition, the INA imposes civil and criminal penalties on aliens themselves for unlawful entry into the United States, see 8 U.S.C. § 1325, and authorizes criminal penalties for individuals who bring aliens into the United States, aid or assist the entry of inadmissible aliens, or import aliens for immoral purposes, see 8 U.S.C. §§ 1323, 1327, 1328.

¶49 Lastly, 8 U.S.C. § 1324(c) expressly permits local law enforcement officers to arrest those who violate that statute's provisions, but 8 U.S.C. § 1329 expressly grants to United States district courts jurisdiction of all causes brought by the United States that arise under the pertinent subsection and provides that "[i]t shall be the duty of the

United States attorney of the proper district to prosecute every such suit when brought by the United States."

¶50 In our view, when read together, these provisions evince Congress's intent to maintain a uniform, federally regulated framework for criminalizing and regulating the transportation, concealment, and inducement of unlawfully present aliens, and this framework is so pervasive that it has left no room for the states to supplement it. See Arizona, 567 U.S. at 399.

¶51 Accordingly, we conclude that the INA preempts section 18-13-128 under the doctrine of field preemption.

### 2. Conflict Preemption

¶52 We further conclude that the INA preempts section 18-13-128 under the doctrine of conflict preemption.

¶53 As noted above, a state law is preempted under conflict preemption principles when, as pertinent here, the challenged state law stands as an obstacle to the accomplishment and execution of Congress's purposes and objectives in enacting a federal statute. See Arizona, 567 U.S. at 399. Here, for several reasons, we conclude that section 18-13-128 stands as an obstacle to the accomplishment and execution of Congress's purposes and objectives in enacting the INA's various provisions related to the transportation, concealment, and inducement of unlawfully present aliens.

¶54 First, section 18-13-128 conflicts with the INA's carefully delineated scheme for punishing conduct related to the transportation of unlawfully present aliens. For example, a violation of section 18-13-128 carries a minimum sentence of four years and

a maximum sentence of twelve years. See § 18-13-128(2) (classifying a violation of the statute as a class 3 felony); § 18-1.3-401(1)(a)(V)(A) (providing the presumptive penalty range for class 3 felonies). In contrast, many of the INA's anti-smuggling provisions do not mandate a minimum term of imprisonment. See, e.g., 8 U.S.C. § 1324(a)(1)(B)(i)–(iv) (providing for fines as one penalty option). Indeed, a violation of the INA's anti-smuggling provisions can result in both a lesser minimum penalty (e.g., a fine) and a lesser maximum penalty than section 18-13-128's presumptive four- to twelve-year sentencing range. See 8 U.S.C. § 1324(a)(1)(B)(i)–(ii), (a)(2)(A), (a)(2)(B).

¶55 Similarly, unlike section 18-13-128, the INA allows offenders who act for the purpose of commercial advantage or private financial gain to be punished differently from those who do not. Compare 8 U.S.C. § 1324(a)(1)(B)(i), with 8 U.S.C. § 1324(a)(1)(B)(ii); and compare 8 U.S.C. § 1324(a)(2)(A), with 8 U.S.C. § 1324 (a)(2)(B)(ii).

¶56 The INA also (1) distinguishes between transportation within the United States and transportation into the United States, see 8 U.S.C. §§ 1324(a)(1)(B)(i)–(ii), 1324(a)(2)(A), and (2) lists circumstances (e.g., knowledge of an alien's intent to commit certain offenses against the United States or a state and the fact that the alien was not immediately on arrival brought and presented to an appropriate immigration officer) that may warrant the imposition of greater or lesser penalties, see 8 U.S.C. § 1324(a)(2)(A), § 1324(a)(2)(B)(i)–(iii). Neither section 18-13-128 nor Colorado's general sentencing statutes specifically identify such circumstances as grounds to impose greater or lesser penalties in the context of alien smuggling.

¶57 These differing provisions for punishment stand as an obstacle to the accomplishment and execution of Congress's full purposes and objectives not just because they are different, but because they undermine Congress's careful calibration of punishments for the crimes proscribed. See Valle del Sol, 732 F.3d at 1027 (explaining that the provision of additional and different state penalties under Arizona's statute for harboring unauthorized aliens disrupts the congressional calibration and creates a conflict with Congress's legislative plan).

¶58 Second, section 18-13-128 criminalizes a different range of conduct than does the INA. Under the INA, a person commits alien smuggling if, "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, [that person] transports, or moves or attempts to transport or move such alien within the United States." 8 U.S.C. § 1324(a)(1)(A)(ii) (emphasis added). This language affirmatively requires a defendant to know or recklessly disregard a fact, namely, that the smuggled person "has come to, entered, or remains in the United States in violation of law." Id. As a result, under federal law, the prosecution must prove that "the alien was present in violation of law." United States v. Franco-Lopez, 687 F.3d 1222, 1226 (10th Cir. 2012); see also United States v. Hernandez, 913 F.2d 568, 569 (8th Cir. 1990) (per curiam) (Among other things, "[t]he government was required to prove . . . the alien was in the United States in violation of the law."); United States v. Alvarado-Machado, 867 F.2d 209, 212 (5th Cir. 1989) ("The aliens' status is an element of the crime of transporting illegal aliens.").

¶59 In contrast, as the People assert and the division below determined, Fuentes-Espinoza, ¶¶ 25–39, section 18-13-128 criminalizes certain behavior of people who act with the purpose of assisting others to enter, remain in, or travel through the United States or Colorado in violation of immigration laws. Specifically, as noted above, that statute provides, in pertinent part:

> A person commits smuggling of humans if, for the purpose of assisting another person to enter, remain in, or travel through the United States or the state of Colorado in violation of immigration laws, he or she provides or agrees to provide transportation to that person in exchange for money or any other thing of value.

§ 18-13-128(1) (emphasis added).

¶60 Under the plain language of this statute, a person who acts with the pertinent purpose could be convicted even absent a finding that the alien whom he or she was assisting was actually violating immigration laws. As a result, although, as the People argue, both the federal and state statutes criminalize certain conduct by human smugglers, section 18-13-128 adds a new set of prohibited activities and thus "sweeps more broadly than its federal counterpart." See Valle del Sol, 732 F.3d at 1028–29. In doing so, the Colorado statute disrupts Congress's objective of creating a uniform scheme of punishment because some smuggling activities involving unauthorized aliens are now punishable in Colorado but not elsewhere. See id.

¶61 For these reasons, we conclude that, like the human smuggling statutes invalidated in a number of recent federal circuit court opinions, section 18-13-128 is preempted by the INA under principles of conflict preemption.

¶62 We are not persuaded otherwise by the People's contention that any differences between section 18-13-128 and the INA are minor and permissible because section 18-13-128 still "mirrors federal objectives and furthers a legitimate state goal." Plyler v. Doe, 457 U.S. 202, 225 (1982). As the Supreme Court has observed, "The fact of a common end hardly neutralizes conflicting means." Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 379 (2000); see also Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emps. of Am. v. Lockridge, 403 U.S. 274, 287 (1971) ("Conflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy."). Indeed, in Arizona, 567 U.S. at 406, the Court explicitly recognized that although the Arizona statute at issue "attempt[ed] to achieve one of the same goals as federal law—the deterrence of unlawful employment"—this was not enough to save it from preemption because the state statute still involved "a conflict in the method of enforcement."

¶63 The same is true here. Although section 18–13–128 might "mirror" some of the goals and objectives articulated in the INA, it criminalizes distinct conduct and provides for greater penalties than does the INA. Accordingly, section 18-13-128 stands as an obstacle to (1) the calibration of penalties articulated by Congress for punishing the transportation, concealment, and inducement of unlawfully present aliens and (2) the uniformity of enforcement contemplated by the federal scheme.

¶64 We likewise are unpersuaded by the People's attempt to frame the purpose of the INA's human smuggling provisions as being primarily aimed at protecting aliens from the dangers of human smuggling and not at creating a uniform system to penalize the transportation, concealment, and inducement of unlawfully present aliens.

Although, as the People assert, 8 U.S.C. § 1324(1)(A)(ii) criminalizes conduct by human smugglers, that provision also reflects Congress's concern with aliens' unlawful conduct.

¶65 Specifically, as noted above, that section provides that any person who

> knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports or moves or attempts to transport or move such an alien within the United States by means of transportation or otherwise, in furtherance of such violation of law [shall be punished as provided in subparagraph (B) of that statute].

(Emphasis added.)

¶66 In our view, this language reveals a principal concern with the alien's unlawful conduct. Thus, the statute punishes third-parties for acting "in furtherance of" the alien's unlawful acts. We see nothing in this statutory language, however, indicating a congressional intent to protect aliens from human smuggling.

## III. Conclusion

¶67 For these reasons, we conclude that the INA preempts section 18-13-128 under the doctrines of field and conflict preemption. Accordingly, the judgment of the court of appeals is reversed, and the case is remanded with instructions that Fuentes-Espinoza's convictions under section 18-13-128 be vacated and for further proceedings consistent with this opinion.

**JUSTICE EID** dissents, and **JUSTICE COATS** and **JUSTICE BOATRIGHT** join in the dissent.

JUSTICE EID, dissenting.

¶68 After today's decision, the State of Colorado can no longer protect the victims of human smuggling operations by declaring human smuggling to be a crime. The majority reasons that Colorado's human smuggling statute, § 18-13-128, C.R.S. (2017), penalizes "the transportation, concealment, and inducement of unlawfully present aliens," and therefore must be preempted by federal law. See maj. op. ¶ 2. The majority, however, misses the point of Colorado's human smuggling statute, which is to protect, not punish, the passengers of human smuggling operations regardless of their immigration status. In this way, the Colorado human smuggling statute is critically different from the federal law on the subject, which focuses on punishing the defendant driver as an aider and abettor of the passenger's violation of federal immigration laws. Because Colorado and federal law do not focus on the same conduct, the Colorado human smuggling statute does not stand as an obstacle to, and is therefore not preempted by, federal law. Accordingly, I respectfully dissent from the majority's opinion holding otherwise.

¶69 The majority first concludes that section 18-13-128 is preempted under principles of field preemption by the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101–1537 (2017). Maj. op. ¶¶ 1, 43. Citing Arizona v. United States, 567 U.S. 387 (2012), the majority notes that the federal government "has broad, undoubted power over the subject of immigration and the status of aliens," and that its "governance of immigration and alien status is extensive and complex." Id. at ¶ 44 (quoting Arizona, 567 U.S. at 394–95). The majority opinion seems to suggest that Arizona could be read

for the proposition that the federal government has entirely occupied the field of regulating immigration and alien status, such that any law that might incidentally impact aliens is preempted. See id. at ¶¶ 43–45. But Arizona is not so broad.

¶70 The Supreme Court in Arizona carefully limited its field preemption analysis to the particular field of alien registration. See Arizona, 567 U.S. at 401–03. In addressing section 3 of the Arizona act at issue, which criminalized the failure to carry an alien registration document, the Court explained that federal law "provide[s] a full set of standards governing alien registration." Id. at 401. Further, it concluded that, "with respect to the subject of alien registration, Congress intended to preclude States from 'complement[ing] the federal law,'" id. at 403 (emphasis added) (quoting Hines v. Davidowitz, 312 U.S. 52, 66–67 (1941)). The Court did not hold that Congress has fully occupied all fields in any way connected to aliens or immigration. Indeed, the Supreme Court "has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se pre-empted." DeCanas v. Bica, 424 U.S. 351, 355 (1976), superseded by statute, Immigration Reform and Control Act of 1986, 100 Stat. 3359, as recognized in Chamber of Commerce v. Whiting, 563 U.S. 582, 588–90 (2011). And while the Court did acknowledge in Arizona that federal law has become more comprehensive since DeCanas, see Arizona, 567 U.S. at 404, again, it was careful to limit its field preemption analysis to the specific field of alien registration. Id. at 403. Because Colorado's human smuggling statute in no way involves alien registration, Arizona simply offers no support for the majority's conclusion that the Colorado human smuggling statute is field preempted.

¶71 With regard to other provisions of the Arizona law at issue, the Court in Arizona took a far narrower approach, considering whether each provision at issue conflicted with federal law to such a degree that it "stands as an obstacle" to federal law. 557 U.S. at 405 (quoting Hines, 312 U.S. at 67). Most relevant here, the Court applied such an approach in addressing section 5(C) of the Arizona law, which made it a state misdemeanor for "an unauthorized alien to knowingly apply for work." Id. at 403. The Supreme Court emphasized that the section stood as an obstacle to the regulatory system Congress chose because it ran contrary to a deliberate choice by Congress not to impose criminal penalties on aliens seeking work. Id. at 404–06. The Court observed that the legislative background of the relevant federal law, the Immigration Reform and Control Act of 1986, "underscores the fact that Congress made a deliberate choice not to impose criminal penalties on aliens who seek, or engage in, unauthorized employment." Id. at 405. The Court accordingly concluded that, because Congress deliberately chose not to impose criminal penalties on those seeking employment, "[i]t follows that a state law to the contrary is an obstacle to the regulatory system Congress chose." Id. at 406.

¶72 The question here, then, is whether Congress determined that Colorado should be prevented from criminalizing the conduct that is the focus of the human smuggling statute, such that the statute runs contrary to a deliberate choice by Congress. The majority opinion offers no reason to believe that Congress possessed such intent when it passed the INA, let alone made a "deliberate choice" in this regard, such as was present in Arizona.

¶73 That is because the Colorado human smuggling statute and federal law focus on different conduct. The INA makes it a crime for anyone who, "knowing[ly] or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law." 8 U.S.C. § 1324(a)(1)(A)(ii) (emphasis added). Federal circuit courts have held that under the INA, the prosecution must prove "the fact" that the passenger was in the country in violation of law; the defendant either knew or recklessly disregarded that fact; and the defendant's transportation furthered the passenger's violation of the law. See maj. op. ¶ 58 (discussing the first two elements); see, e.g., United States v. Franco-Lopez, 687 F.3d 1222, 1226–28 (10th Cir. 2012) (listing cases); United States v. Barajas-Chavez, 162 F.3d 1285, 1288–89 (10th Cir. 1999) (en banc) (listing cases). As such, the pertinent provision of the INA is akin to an aiding and abetting statute, with the defendant driver aiding and abetting the passenger's violation of the law.

¶74 By contrast, Colorado's human smuggling act does not require proof that the person transported was traveling in the country in violation of the law. See maj. op. ¶¶ 59–60. Under section 18-13-128, a defendant commits the crime of human smuggling if he provides transportation to a person for money, with the "purpose" of transporting that person in violation of the law, even if that person was not in fact traveling in violation of law. See § 18-13-128(1); maj. op. ¶¶ 59–60. Colorado's statute thus focuses on the conduct of the defendant driver, not on the passenger's status or

conduct. In fact, the plain language of the statute indicates the purpose of Colorado's human smuggling statute is the protection, not punishment, of the passenger.

¶75 The majority implicitly recognizes this critical difference between the Colorado human smuggling statute and federal law, but entirely misses its significance. The majority concludes, for example, that under the plain language of the Colorado human smuggling statute, "a person who acts with the pertinent purpose could be prosecuted even absent a finding that the alien whom he or she was assisting was actually violating immigration laws." Maj. op. ¶ 60. In other words, the Colorado human smuggling statute focuses on protecting the victims of human smuggling laws, rather than on the violation of immigration laws. Likewise, the majority concludes that federal law "reflects Congress's concern with aliens' unlawful conduct" in "punish[ing] third-parties for acting 'in furtherance of' the alien's unlawful acts.'" Id. at ¶¶ 64–66. In other words, the focus of the federal law is the unlawful conduct of the passengers and the fact that the defendant driver is helping them accomplish it. Indeed, the majority flat-out declares that federal law does not "indicat[e] a congressional intent to protect aliens from human smuggling." Id. at ¶ 66.

¶76 That is the whole point. Because the federal and state laws take aim at different conduct, there can be no conflict between them. Therefore, there is no evidence that the Colorado human smuggling statute stands as an obstacle to the accomplishment of Congress's purposes.

¶77 The majority largely relies upon several federal circuit court cases that find various state provisions to be conflict and field preempted. See maj. op. ¶¶ 34–40. But

the state provisions at issue in those cases mirrored federal law in focusing on immigration law. For example, unlike Colorado's statute, each of the state laws at issue in those cases mirrored the INA's requirement of a defendant's knowledge or reckless disregard of the passenger's unlawful status. The INA, as noted above, provides that any person who "knowing[ly] or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States . . . in furtherance of such violation of law" shall be punished. 8 U.S.C. § 1324(a)(1)(A)(ii). The law at issue in Georgia Latino Alliance for Human Rights v. Governor of Georgia similarly criminalized "knowingly and intentionally transport[ing] or mov[ing] an illegal alien . . . for the purpose of furthering the illegal presence of the alien in the United States." 691 F.3d 1250, 1256, 1263 (11th Cir. 2012) (quoting Ga. Code. Ann. § 16-11-200(b) (West 2017)). The South Carolina law considered by the Fourth Circuit made it a state felony to, "knowingly or in reckless disregard of the fact" that another person is in the country in violation of law, "transport, move, or attempt to transport that person." United States v. South Carolina, 720 F.3d 518, 523 n.2 (4th Cir. 2013) (quoting Act 69, 2011 S.C. Acts (S.B. 20)). And the laws at issue in Valle del Sol, Inc. v. Whiting, 732 F.3d 1006, 1012–13 (9th Cir. 2013), and United States v. Alabama, 691 F.3d 1269, 1277 (11th Cir. 2012), likewise required an offender to know or recklessly disregard the fact that a passenger was in the country unlawfully. Thus, the laws considered in the federal cases, like the INA, focused on violations of immigration law, and therefore stood as an obstacle to federal law.

¶78 Indeed, unlike Colorado's human smuggling statute, the state laws at issue in those cases represented broad attempts to regulate immigration. For instance, each law also criminalized other actions resembling those penalized by the INA, see 8 U.S.C. § 1324(a)(1)(A), such as concealing, harboring, or shielding an alien from detection or inducing an alien to enter the state. See Ga. Latino Alliance, 691 F.3d at 1256; Alabama, 691 F.3d at 1277; South Carolina, 720 F.3d at 523; Valle del Sol, 732 F.3d at 1012–13. The state laws were also titled similarly to the relevant provision of the INA,[3] and they were passed as parts of legislative bills with stated immigration-related aims. The Arizona law, for example, was part of a bill "comprised of a variety of immigration-related provisions," which had the stated purpose of "mak[ing] attrition through enforcement the public policy of all state and government agencies in Arizona." Valle del Sol, 732 F.3d at 1012. The Georgia law, as the majority notes, see maj. op. ¶ 34, was included in "the Illegal Immigration Reform and Enforcement Act of 2011," which was intended to "address the problem of illegal immigration within the state,"[4] Ga. Latino Alliance, 691

[3] The relevant provision of the INA is titled "Bringing in and harboring certain aliens." 8 U.S.C. § 1324. Arizona's law was titled, in pertinent part, "Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens." Ariz. Rev. Stat. Ann. § 13-2929 (2014). Alabama's was "Concealing, harboring, shielding, etc., unauthorized aliens," Ala. Code § 31-13-13 (2012); South Carolina's was "Unlawful entry into the United States; furthering illegal entry by or avoidance of detection of undocumented alien; penalties; exceptions," S.C. Code Ann. § 16-9-460 (2012); and the transportation-related portion of Georgia's law was titled "Transporting or moving illegal aliens; penalties," Ga. Code Ann. § 16-11-200 (West 2011).

[4] Similarly, the South Carolina law was a component of an act passed "in response to a perceived failure of the United States to secure its southern border," South Carolina, 720 F.3d at 522, and the Alabama law was included in a bill with the stated purposes of discouraging illegal immigration within the state and maximizing enforcement of federal immigration laws, see Alabama, 691 F.3d at 1276.

F.3d at 1256. Under such circumstances, the federal circuit courts found the state laws to constitute impermissible "complements" to the INA. See id. at 1266.

¶79 Because the same circumstances are not present here, the federal circuit cases are simply inapposite. Unlike the state laws at issue in those cases, Colorado's human smuggling statute does not mirror federal immigration law and then attempt to supplement it. Instead, as noted above, Colorado's statute singularly focuses on protecting passengers as the victims of human smuggling operations. As such, it is not an impermissible supplement to federal immigration law, but rather a permissible attempt to address the dangers that human smuggling poses to passengers.

¶80 As the majority points out, there are a number of additional differences between the Colorado human smuggling statute and the INA. Maj. op. ¶¶ 55–56. For example, Colorado's human smuggling statute makes the exchange of "money or any other thing of value" an element of the crime, § 18-13-128, rather than just a consideration in sentencing as it is under the INA, see 8 U.S.C. § 1324(a)(1)(B)(i)–(ii). But these differences simply underscore that the purpose of Colorado's human smuggling statute is to protect passengers from the dangers of human smuggling. Whereas the majority finds it problematic that Colorado's statute criminalizes "a different range of conduct than does the INA," see maj. op. ¶¶ 58–60, the difference in focus between the two statutes instead supports the conclusion that Congress, in enacting the INA, did not intend to preclude states from enacting laws such as Colorado's human smuggling statute.

¶81 At bottom, the majority seems to conclude that any deviation from federal law regarding "the transportation of unlawfully present aliens" must be preempted. See maj. op. ¶ 54. But as the Supreme Court has pointed out, state powers are "often exercised in concurrence with those of the National Government." United States v. Locke, 529 U.S. 89, 109 (2000). Indeed, a "high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal act." Whiting, 563 U.S. at 607 (quoting Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 110 (1992) (Kennedy, J., concurring in part and concurring in the judgment)). Because this "high threshold" is far from met in this case, I respectfully dissent.

I am authorized to state that JUSTICE COATS and JUSTICE BOATRIGHT join in this dissent.

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# MEMORANDUM 2b[1]

TO: Statutory Revision Committee

FROM: Duane Gall, Office of Legislative Legal Services

DATE: March 1, 2019

SUBJECT: Correction of cross-reference in the renewable energy standard statute

## Summary

In 2013, the General Assembly passed Senate Bill 13-252, which significantly amended the renewable energy standard statute, section 40-2-124, C.R.S. The amendments included an increase in the portfolio standard (i.e., the component of total retail electricity sales generated from renewable energy sources) applicable to cooperative electric associations (co-ops).

As introduced, the bill required each co-op serving 100,000 or more meters to "generate or cause to be generated at least 10% of the energy it provides to its customers from eligible energy resources in the years 2020 and thereafter." An amendment in the Senate further subdivided this 10% between renewable energy sources generally and "distributed generation," i.e., customer-sited facilities such as rooftop solar panels. This provision is commonly known as the "DG carve-out." The DG carve-out specified that, of the total 10% derived from

[1] This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

renewables, "one-tenth, *or one percent of total retail electricity sales,"* must be from distributed generation. (*Emphasis added*)

The bill then went to the House, where further amendments were made. In the waning hours of the legislative session, the relevant portfolio standard for this class of co-ops was increased from 10% to 20%.[2] However, in the DG carve-out, no corresponding change was made to the clarifying clause "or one percent of total retail electricity sales." To keep the actual DG carve-out at one-tenth of renewables generally, that clause should either have been omitted or, in the case of the co-ops subject to a 20% standard, changed to specify *2%* of total retail electricity sales.

OLLS recommends simply striking the phrase "or one percent of total retail electricity sales" since it no longer clarifies but instead confuses the amount of the carve-out.

## Analysis

The relevant portions[3] of section 40-2-124, C.R.S., currently state:

> **40-2-124. Renewable energy standards - qualifying retail and wholesale utilities - definitions - net metering - legislative declaration.** (1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or fewer, is a qualifying retail utility. Each qualifying retail utility, with the exception of cooperative electric associations that have voted to exempt themselves from commission jurisdiction pursuant to section 40-9.5-104 and municipally owned utilities, is subject to the rules established under this article by the commission. No additional regulatory authority is provided to the commission other than that specifically contained in this section. In accordance with article 4 of title 24, C.R.S., the commission shall revise or clarify existing rules to establish the following:
>
> (c) Electric resource standards:

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[2] See rerevised bill, page 6, line 25 (attached).

[3] § 40-2-124 (1) introductory portion, (1)(c) introductory portion, (1)(c)(V) introductory portion, (1)(c)(V)(D), (1)(c)(V)(D), (1)(c)(V.5), and (1)(c)(X), C.R.S.

(V) Notwithstanding any other provision of law but subject to subsection (4) of this section, the electric resource standards must require *each cooperative electric association that is a qualifying retail utility and that provides service to fewer than one hundred thousand meters,* and each municipally owned utility that is a qualifying retail utility, to generate, or cause to be generated, electricity from eligible energy resources in the following minimum amounts:

(D) *Ten percent* of retail electricity sales in Colorado for the years 2020 and thereafter.

(V.5) Notwithstanding any other provision of law, *each cooperative electric association that provides electricity at retail to its customers and serves one hundred thousand or more meters* shall generate or cause to be generated at least *twenty percent* of the energy it provides to its customers from eligible energy resources in the years 2020 and thereafter.

(X) Of the minimum amounts of electricity required to be generated or caused to be generated by qualifying retail utilities in accordance with subparagraph (V.5) and sub-subparagraph (D) of subparagraph (V) of this paragraph (c), *one-tenth, or one percent of total retail electricity sales, must be from distributed generation;* except that:

(A) For a cooperative electric association that is a qualifying retail utility and that provides service to fewer than ten thousand meters, the distributed generation component may be three-quarters of one percent of total retail electricity sales; and

(B) This subparagraph (X) does not apply to a qualifying retail utility that is a municipal utility. (*Emphases added*)

In Senate Bill 13-252 as introduced, the applicable renewable energy standard for co-ops serving 100,000 or more meters was 25% percent, while those serving fewer than 100,000 meters remained subject to the existing standard of 10% but were required to comply with the DG carve-out.

Senate amendments moved the DG carve-out language to a new location and specified that it applied to both the larger and smaller co-ops. House amendments further subdivided the smaller co-ops into those serving fewer than 10,000 meters and those serving between 10,000 and 100,000 meters, with a

smaller DG carve-out for the smallest co-ops,[4] and ultimately changed the overall renewable energy standard applicable to the largest co-ops to 20%.[5]

In all, some 83 amendments were drafted for SB 13-252, many of which adjusted the standards for the three categories of co-ops. The legislative history is unclear as to when, if ever, the standard applicable to all but the smallest co-ops was a uniform 10%, but that is the only scenario in which the DG carve-out specified in section 40-2-124 (1)(c)(X), C.R.S., could accurately have been described as "one percent of total retail electricity sales" with regard to both of the categories mentioned.

## Statutory Charge[6]

OLLS recommends that the phrase "or one percent of total retail electricity sales" be stricken from section 40-2-124 (1)(c)(X) introductory portion. Alternatively, the phrase could be limited in scope to apply only to the co-ops subject to a 10% renewable energy standard, with a parallel construction and a 2% DG carve-out specified for co-ops subject to a twenty percent renewable energy standard. We believe that either of these alternatives would be consistent with the committee's authority to "modify or eliminate … contradictory rules of law."

## Proposed Bill

If the Statutory Revision Committee directs the Office of Legislative Legal Services to prepare a bill draft, we propose substantially the language contained in the accompanying bill.

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[4] §40-2-124 (1)(c)(X)(A), C.R.S.; see page 7, lines 14-18 of the rerevised bill.

[5] Page 6, line 25 of the rerevised bill.

[6] The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

**First Regular Session**
**Sixty-ninth General Assembly**
**STATE OF COLORADO**

**REREVISED**
*This Version Includes All Amendments*
*Adopted in the Second House*

LLS NO. 13-0962.01 Duane Gall x4335 **SENATE BILL 13-252**

## SENATE SPONSORSHIP

**Morse and Schwartz,** Carroll, Giron, Jahn, Jones, Nicholson, Steadman

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HOUSE
3rd Reading Unamended
April 30, 2013

HOUSE
Amended 2nd Reading
April 27, 2013

SENATE
3rd Reading Unamended
April 15, 2013

SENATE
Amended 2nd Reading
April 12, 2013

## A BILL FOR AN ACT

**CONCERNING MEASURES TO INCREASE COLORADO'S RENEWABLE ENERGY STANDARD SO AS TO ENCOURAGE THE DEPLOYMENT OF METHANE CAPTURE TECHNOLOGIES.**

### Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)*

In the statute creating Colorado's renewable energy standard, the bill removes in-state preferences with respect to:

- Wholesale distributed generation;
- The 1.25 kilowatt-hour multiplier for each kilowatt-hour of

electricity generated from eligible energy resources other than retail distributed generation;

- The 1.5 kilowatt-hour multiplier for community-based projects; and
- Policies the Colorado public utilities commission (PUC) must implement by rule to provide incentives to qualifying retail utilities to invest in eligible energy resources.

The bill also raises the percentage of retail electricity sales that must be achieved from eligible energy resources by cooperative electric associations that provide service to 100,000 meters or more from 10% to 25%, starting in 2020, and increases the allowable retail rate impact for cooperative electric associations from 1% to 2%.

The bill expands the definition of "eligible energy resources" that can be used to meet the standards to include coal mine methane and synthetic gas produced by pyrolysis of municipal solid waste, subject to a determination by the PUC that the production and use of these gases does not cause a net increase in greenhouse gas emissions.

The bill also implements a new eligible energy standard of 25% for generation and transmission cooperative electric associations that directly provide electricity at wholesale to cooperative electric associations in Colorado that are its members. The standard applies only to sales by these wholesale providers to their members in Colorado. The wholesale providers are required to make public reports of their annual progress toward meeting the standard by 2020. The PUC is granted no additional regulatory authority over these providers in the implementation of this standard.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 40-2-124, **amend** (1) introductory portion, (1) (a), (1) (c) (II) (A), (1) (c) (III), (1) (c) (V) introductory portion, ___ (1) (c) (VI) introductory portion, (1) (c) (VII) (A), (1) (f) introductory portion, (1) (g) (I) (A), and (1) (g) (IV) (A); and **add** (1) (c) (V.5), (1) (c) (X), and (8) as follows:

**40-2-124. Renewable energy standards - qualifying retail and wholesale utilities - definitions - net metering - legislative declaration.**

(1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or

fewer, ~~shall be considered~~ IS a qualifying retail utility. Each qualifying retail utility, with the exception of cooperative electric associations that have voted to exempt themselves from commission jurisdiction pursuant to section 40-9.5-104 and municipally owned utilities, ~~shall be~~ IS subject to the rules established under this article by the commission. No additional regulatory authority ~~of~~ IS PROVIDED TO the commission other than that specifically contained in this section. ~~is provided or implied.~~ In accordance with article 4 of title 24, C.R.S., the commission shall revise or clarify existing rules to establish the following:

(a) Definitions of eligible energy resources that can be used to meet the standards. "Eligible energy resources" means recycled energy and renewable energy resources. IN ADDITION, RESOURCES USING COAL MINE METHANE AND SYNTHETIC GAS PRODUCED BY PYROLYSIS OF MUNICIPAL SOLID WASTE ARE ELIGIBLE ENERGY RESOURCES IF THE COMMISSION DETERMINES THAT THE ELECTRICITY GENERATED BY THOSE RESOURCES IS GREENHOUSE GAS NEUTRAL. The commission shall determine, following an evidentiary hearing, the extent to which such electric generation technologies utilized in an optional pricing program may be used to comply with this standard. A fuel cell using hydrogen derived from an eligible energy resource is also an eligible electric generation technology. Fossil and nuclear fuels and their derivatives are not eligible energy resources. For purposes of this section:

(I) "Biomass" means:

(A) Nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush;

(B) Animal wastes and products of animal wastes; or

(C) Methane produced at landfills or as a by-product of the

treatment of wastewater residuals.

(II) "COAL MINE METHANE" MEANS METHANE CAPTURED FROM ACTIVE AND INACTIVE COAL MINES WHERE THE METHANE IS ESCAPING TO THE ATMOSPHERE. IN THE CASE OF METHANE ESCAPING FROM ACTIVE MINES, ONLY METHANE VENTED IN THE NORMAL COURSE OF MINE OPERATIONS THAT IS NATURALLY ESCAPING TO THE ATMOSPHERE IS COAL MINE METHANE FOR PURPOSES OF ELIGIBILITY UNDER THIS SECTION.

~~(II)~~ (III) "Distributed renewable electric generation" or "distributed generation" means:

(A) Retail distributed generation; and

(B) Wholesale distributed generation.

(IV) "GREENHOUSE GAS NEUTRAL", WITH RESPECT TO ELECTRICITY GENERATED BY A COAL MINE METHANE OR SYNTHETIC GAS FACILITY, MEANS THAT THE VOLUME OF GREENHOUSE GASES EMITTED INTO THE ATMOSPHERE FROM THE CONVERSION OF FUEL TO ELECTRICITY IS NO GREATER THAN THE VOLUME OF GREENHOUSE GASES THAT WOULD HAVE BEEN EMITTED INTO THE ATMOSPHERE OVER THE NEXT FIVE YEARS, BEGINNING WITH THE PLANNED DATE OF OPERATION OF THE FACILITY, IF THE FUEL HAD NOT BEEN CONVERTED TO ELECTRICITY, WHERE GREENHOUSE GASES ARE MEASURED IN TERMS OF CARBON DIOXIDE EQUIVALENT.

(V) "PYROLYSIS" MEANS THE THERMOCHEMICAL DECOMPOSITION OF MATERIAL AT ELEVATED TEMPERATURES WITHOUT THE PARTICIPATION OF OXYGEN.

~~(III)~~ (VI) "Recycled energy" means energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from

exhaust stacks or pipes to electricity and that does not combust additional fossil fuel. "Recycled energy" does not include energy produced by any system that uses energy, lost or otherwise, from a process whose primary purpose is the generation of electricity, including, without limitation, any process involving engine-driven generation or pumped hydroelectricity generation.

~~(IV)~~ (VII) "Renewable energy resources" means solar, wind, geothermal, biomass, new hydroelectricity with a nameplate rating of ten megawatts or less, and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty megawatts or less.

~~(V)~~ (VIII) "Retail distributed generation" means a renewable energy resource that is located on the site of a customer's facilities and is interconnected on the customer's side of the utility meter. In addition, retail distributed generation shall provide electric energy primarily to serve the customer's load and shall be sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the customer at that site. For purposes of this subparagraph ~~(V)~~ (VIII), the customer's "site" includes all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

~~(VI)~~ (IX) "Wholesale distributed generation" means a renewable energy resource ~~in Colorado~~ with a nameplate rating of thirty megawatts or less and that does not qualify as retail distributed generation.

(c) Electric resource standards:

(II) (A) Of the amounts of distributed generation in sub-subparagraphs (C), (D), and (E) of subparagraph (I),

SUB-SUBPARAGRAPH (D) OF SUBPARAGRAPH (V), AND SUBPARAGRAPH (V.5) of this paragraph (c), at least one-half ~~shall~~ MUST be derived from retail distributed generation; EXCEPT THAT THIS SUB-SUBPARAGRAPH (A) DOES NOT APPLY TO A QUALIFYING RETAIL UTILITY THAT IS A MUNICIPAL UTILITY.

(III) Each kilowatt-hour of electricity generated from eligible energy resources, ~~in Colorado,~~ other than retail distributed generation ~~shall be counted~~ AND OTHER THAN ELIGIBLE ENERGY RESOURCES BEGINNING OPERATION ON OR AFTER JANUARY 1, 2015, COUNTS as one and ~~one-quarter~~ ONE-FOURTH kilowatt-hours for the purposes of compliance with this standard.

(V) Notwithstanding any other provision of law but subject to subsection (4) of this section, the electric resource standards ~~shall~~ MUST require each cooperative electric association THAT IS A QUALIFYING RETAIL UTILITY AND THAT PROVIDES SERVICE TO FEWER THAN ONE HUNDRED THOUSAND METERS, and EACH municipally owned utility that is a qualifying retail utility, to generate, or cause to be generated, electricity from eligible energy resources in the following minimum amounts:

(V.5) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH COOPERATIVE ELECTRIC ASSOCIATION THAT PROVIDES ELECTRICITY AT RETAIL TO ITS CUSTOMERS AND SERVES ONE HUNDRED THOUSAND OR MORE METERS SHALL GENERATE OR CAUSE TO BE GENERATED AT LEAST TWENTY PERCENT OF THE ENERGY IT PROVIDES TO ITS CUSTOMERS FROM ELIGIBLE ENERGY RESOURCES IN THE YEARS 2020 AND THEREAFTER.

(VI) Each kilowatt-hour of electricity generated from eligible

energy resources at a community-based project ~~shall~~ MUST be counted as one and one-half kilowatt-hours. For purposes of this subparagraph (VI), "community-based project" means a project: ~~located in Colorado.~~

(VII) (A) For purposes of compliance with the standards set forth in ~~subparagraph~~ SUBPARAGRAPHS (V) AND (V.5) of this paragraph (c), each kilowatt-hour of renewable electricity generated from solar electric generation technologies shall be counted as three kilowatt-hours.

(X) OF THE MINIMUM AMOUNTS OF ELECTRICITY REQUIRED TO BE GENERATED OR CAUSED TO BE GENERATED BY QUALIFYING RETAIL UTILITIES IN ACCORDANCE WITH SUBPARAGRAPH (V.5) AND SUB-SUBPARAGRAPH (D) OF SUBPARAGRAPH (V) OF THIS PARAGRAPH (c), ONE-TENTH, OR ONE PERCENT OF TOTAL RETAIL ELECTRICITY SALES, MUST BE FROM DISTRIBUTED GENERATION; EXCEPT THAT:

(A) FOR A COOPERATIVE ELECTRIC ASSOCIATION THAT IS A QUALIFYING RETAIL UTILITY AND THAT PROVIDES SERVICE TO FEWER THAN TEN THOUSAND METERS, THE DISTRIBUTED GENERATION COMPONENT MAY BE THREE-QUARTERS OF ONE PERCENT OF TOTAL RETAIL ELECTRICITY SALES; AND

(B) THIS SUBPARAGRAPH (X) DOES NOT APPLY TO A QUALIFYING RETAIL UTILITY THAT IS A MUNICIPAL UTILITY.

(f) Policies for the recovery of costs incurred with respect to these standards for qualifying retail utilities that are subject to rate regulation by the commission. These policies ~~shall~~ MUST provide incentives to qualifying retail utilities to invest in eligible energy resources ~~in the state of Colorado. Such policies shall~~ AND MUST include:

(g) Retail rate impact rule:

(I) (A) Except as otherwise provided in subparagraph (IV) of this

paragraph (g), for each qualifying utility, the commission shall establish a maximum retail rate impact for this section FOR COMPLIANCE WITH THE ELECTRIC RESOURCE STANDARDS of two percent of the total electric bill annually for each customer. The retail rate impact shall be determined net of new alternative sources of electricity supply from noneligible energy resources that are reasonably available at the time of the determination.

(IV) (A) For cooperative electric associations, the maximum retail rate impact for this section is ~~one~~ TWO percent of the total electric bill annually for each customer.

(8) **Qualifying wholesale utilities - definition - electric resource standard - tradable credits - reports.** (a) **Definition.** EACH GENERATION AND TRANSMISSION COOPERATIVE ELECTRIC ASSOCIATION THAT PROVIDES WHOLESALE ELECTRIC SERVICE DIRECTLY TO COLORADO ELECTRIC ASSOCIATIONS THAT ARE ITS MEMBERS IS A QUALIFYING WHOLESALE UTILITY. COMMISSION RULES ADOPTED UNDER SUBSECTIONS (1) TO (7) OF THIS SECTION DO NOT APPLY DIRECTLY TO QUALIFYING WHOLESALE UTILITIES, AND THIS SUBSECTION (8) DOES NOT PROVIDE THE COMMISSION WITH ADDITIONAL REGULATORY AUTHORITY OVER QUALIFYING WHOLESALE UTILITIES.

(b) **Electric resource standard.** NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH QUALIFYING WHOLESALE UTILITY SHALL GENERATE, OR CAUSE TO BE GENERATED, AT LEAST TWENTY PERCENT OF THE ENERGY IT PROVIDES TO ITS COLORADO MEMBERS AT WHOLESALE FROM ELIGIBLE ENERGY RESOURCES IN THE YEAR 2020 AND THEREAFTER. IF, AND TO THE EXTENT THAT, THE PURCHASE OF ENERGY GENERATED FROM ELIGIBLE ENERGY RESOURCES BY A COLORADO MEMBER FROM A QUALIFYING WHOLESALE UTILITY WOULD CAUSE AN INCREASE IN RATES

FOR THE COLORADO MEMBER THAT EXCEEDS THE RETAIL RATE IMPACT LIMITATION IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (IV) OF PARAGRAPH (g) OF SUBSECTION (1) OF THIS SECTION, THE OBLIGATION IMPOSED ON THE QUALIFYING WHOLESALE UTILITY IS REDUCED BY THE AMOUNT OF SUCH ENERGY NECESSARY TO ENABLE THE COLORADO MEMBER TO COMPLY WITH THE RATE IMPACT LIMITATION.

(c) A QUALIFYING WHOLESALE UTILITY MAY COUNT THE ENERGY GENERATED OR CAUSED TO BE GENERATED FROM ELIGIBLE ENERGY RESOURCES BY ITS COLORADO MEMBERS OR BY THE QUALIFYING WHOLESALE UTILITY ON BEHALF OF ITS COLORADO MEMBERS PURSUANT TO SUBPARAGRAPH (V) OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION TOWARD COMPLIANCE WITH THE ENERGY RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION.

(d) PREFERENCES FOR CERTAIN ELIGIBLE ENERGY RESOURCES AND THE LIMIT ON THEIR APPLICABILITY ESTABLISHED IN SUBPARAGRAPH (VIII) OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION MAY BE USED BY A QUALIFYING WHOLESALE UTILITY IN MEETING THE ENERGY RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION (8).

(e) **Tradable renewable energy credits.** A QUALIFYING WHOLESALE UTILITY SHALL USE A SYSTEM OF TRADABLE RENEWABLE ENERGY CREDITS TO COMPLY WITH THE ELECTRIC RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION (8); EXCEPT THAT A RENEWABLE ENERGY CREDIT ACQUIRED UNDER THIS SUBSECTION (8) EXPIRES AT THE END OF THE FIFTH CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH IT WAS GENERATED.

(f) IN IMPLEMENTING THE ELECTRIC RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION (8), A QUALIFYING WHOLESALE UTILITY

SHALL ASSURE THAT THE COSTS, BOTH DIRECT AND INDIRECT, ATTRIBUTABLE TO COMPLIANCE WITH THE STANDARD ARE RECOVERED FROM ITS COLORADO MEMBERS. THE QUALIFYING WHOLESALE UTILITY SHALL EMPLOY SUCH COST ALLOCATION METHODS AS ARE REQUIRED TO ASSURE THAT ANY DIRECT OR INDIRECT COSTS ATTRIBUTABLE TO COMPLIANCE WITH THE STANDARD ESTABLISHED IN THIS SUBSECTION (8) DO NOT AFFECT THE COST OR PRICE OF THE QUALIFYING WHOLESALE UTILITY'S SALES TO CUSTOMERS OUTSIDE OF COLORADO.

(g) **Reports.** EACH QUALIFYING WHOLESALE UTILITY SHALL SUBMIT AN ANNUAL REPORT TO THE COMMISSION NO LATER THAN JUNE 1, 2014, AND JUNE 1 OF EACH YEAR THEREAFTER. IN ADDITION, THE QUALIFYING WHOLESALE UTILITY SHALL POST AN ELECTRONIC COPY OF EACH REPORT ON ITS WEB SITE AND SHALL PROVIDE THE COMMISSION WITH AN ELECTRONIC COPY OF THE REPORT. IN EACH REPORT, THE QUALIFYING WHOLESALE UTILITY SHALL:

(I) DESCRIBE THE STEPS IT TOOK DURING THE IMMEDIATELY PRECEDING TWELVE MONTHS TO COMPLY WITH THE ELECTRIC RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION (8);

(II) IN THE YEARS BEFORE 2020, DESCRIBE WHETHER IT IS MAKING SUFFICIENT PROGRESS TOWARD MEETING THE STANDARD IN 2020 OR IS LIKELY TO MEET THE 2020 STANDARD EARLY. IF IT IS NOT MAKING SUFFICIENT PROGRESS TOWARD MEETING THE STANDARD IN 2020, IT SHALL EXPLAIN WHY AND SHALL INDICATE THE STEPS IT INTENDS TO TAKE TO INCREASE THE PACE OF PROGRESS; AND

(III) IN 2020 AND THEREAFTER, DESCRIBE WHETHER IT HAS ACHIEVED COMPLIANCE WITH THE ELECTRIC RESOURCE STANDARD ESTABLISHED IN THIS SUBSECTION (8) AND WHETHER IT ANTICIPATES

CONTINUING TO DO SO. IF IT HAS NOT ACHIEVED SUCH COMPLIANCE OR DOES NOT ANTICIPATE CONTINUING TO DO SO, IT SHALL EXPLAIN WHY AND SHALL INDICATE THE STEPS IT INTENDS TO TAKE TO MEET THE STANDARD AND BY WHAT DATE.

(h) NOTHING IN THIS SUBSECTION (8) AMENDS OR WAIVES ANY PROVISION OF SUBSECTIONS (1) TO (7) OF THIS SECTION.

**SECTION 2. Effective date.** This act takes effect July 1, 2013.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

DRAFT
2.28.19

**DRAFT**

LLS NO. 19-0985.01 Duane Gall x4335 **COMMITTEE BILL**

**Statutory Revision Committee**

**BILL TOPIC:** "Fix Inconsistent Terms In Renewable Energy Std"

**A BILL FOR AN ACT**

**CONCERNING THE CORRECTION OF A DISCREPANCY BETWEEN TERMS DESCRIBING A COMPONENT OF THE RENEWABLE ENERGY STANDARD.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/.)*

**Statutory Revision Committee.** The bill resolves a discrepancy between 2 clauses specifying the amount of the distributed generation component of the renewable energy standard applicable to certain cooperative electric associations, as adopted by a 2013 bill that increased the percentages of retail electricity sales that must be derived from

renewable energy resources.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** The general assembly declares that the purpose of this act is to clarify statutory provisions relating to the Colorado renewable energy standard. The general assembly further declares that clarifying these statutory provisions does not alter the scope or applicability of the remaining statutes.

<{***Option 1:***}>

**SECTION 2.** In Colorado Revised Statutes, 40-2-124, **amend** (1) introductory portion and (1)(c)(X) introductory portion as follows:

**40-2-124. Renewable energy standards - qualifying retail and wholesale utilities - definitions - net metering - legislative declaration.** (1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or fewer, is a qualifying retail utility. Each qualifying retail utility, with the exception of cooperative electric associations that have voted to exempt themselves from commission jurisdiction pursuant to section 40-9.5-104 and municipally owned utilities, is subject to the rules established under this ~~article~~ ARTICLE 2 by the commission. No additional regulatory authority is provided to the commission other than that specifically contained in this section. In accordance with article 4 of title 24, ~~C.R.S.,~~ the commission shall revise or clarify existing rules to establish the following:

(c) Electric resource standards:

(X) Of the minimum amounts of electricity required to be generated or caused to be generated by qualifying retail utilities in

accordance with ~~subparagraph (V.5) and sub-subparagraph (D) of subparagraph (V) of this paragraph (c)~~ SUBSECTIONS (1)(c)(V)(D) AND (1)(c)(V.5) OF THIS SECTION, one-tenth ~~or one percent of total retail electricity sales,~~ must be from distributed generation; except that:

<{***Option 2:***}>

**SECTION 3.** In Colorado Revised Statutes, 40-2-124, **amend** (1) introductory portion and (1)(c)(X); and **add** (1)(c)(XI) as follows:

**40-2-124. Renewable energy standards - qualifying retail and wholesale utilities - definitions - net metering - legislative declaration.**

(1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or fewer, is a qualifying retail utility. Each qualifying retail utility, with the exception of cooperative electric associations that have voted to exempt themselves from commission jurisdiction pursuant to section 40-9.5-104 and municipally owned utilities, is subject to the rules established under this ~~article~~ ARTICLE 2 by the commission. No additional regulatory authority is provided to the commission other than that specifically contained in this section. In accordance with article 4 of title 24, ~~C.R.S.,~~ the commission shall revise or clarify existing rules to establish the following:

(c) Electric resource standards:

(X) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(c)(XI) OF THIS SECTION:

(A) Of the minimum amounts of electricity required to be generated or caused to be generated by qualifying retail utilities in accordance with ~~subparagraph (V.5) and sub-subparagraph (D) of subparagraph (V) of this paragraph (c)~~ SUBSECTION (1)(c)(V)(D) OF THIS

SECTION, one-tenth, or one percent of total retail electricity sales, must be from distributed generation; ~~except that:~~ AND

(B) OF THE MINIMUM AMOUNTS OF ELECTRICITY REQUIRED TO BE GENERATED OR CAUSED TO BE GENERATED BY QUALIFYING RETAIL UTILITIES IN ACCORDANCE WITH SUBSECTION (1)(c)(V.5) OF THIS SECTION, ONE-TENTH, OR TWO PERCENT OF TOTAL RETAIL ELECTRICITY SALES, MUST BE FROM DISTRIBUTED GENERATION.

~~(A) For a cooperative electric association that is a qualifying retail utility and that provides service to fewer than ten thousand meters, the distributed generation component may be three-quarters of one percent of total retail electricity sales; and~~

~~(B) This subparagraph (X) does not apply to a qualifying retail utility that is a municipal utility.~~

(XI) (A) FOR A COOPERATIVE ELECTRIC ASSOCIATION THAT IS A QUALIFYING RETAIL UTILITY AND THAT PROVIDES SERVICE TO FEWER THAN TEN THOUSAND METERS, THE DISTRIBUTED GENERATION COMPONENT MAY BE THREE-FOURTHS OF ONE PERCENT OF TOTAL RETAIL ELECTRICITY SALES.

(B) SUBSECTION (1)(c)(X) OF THIS SECTION DOES NOT APPLY TO A QUALIFYING RETAIL UTILITY THAT IS A MUNICIPAL UTILITY.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

**Office of Legislative Legal Services**

Colorado General Assembly

Colorado State Capitol
200 East Colfax Avenue Suite 091
Denver, Colorado 80203-1716

Tel: 303-866-2045 Fax: 303-866-4157
Email: olls.ga@state.co.us

# MEMORANDUM 2c[1]

TO: Statutory Revision Committee

FROM: Kristen Forrestal, Office of Legislative Legal Services

DATE: March 1, 2019

SUBJECT: The repeal of obsolete language concerning child and youth prevention, intervention, and treatment service programs

## Summary

During the 2013 legislative session, the General Assembly passed House Bill 13-1117[2], concerning the alignment of child development programs. The bill transferred the operation of five child and youth prevention, intervention, and treatment programs from the department of public health and environment (department) to the department of human services. As a result of the transfer of the operation of the programs between departments, there is language that governs the department that is obsolete in the Colorado Revised Statutes.

This issue was raised by the department in the course of reviewing the statutes for potential antiquated or obsolete provisions.

## Analysis

The department is statutorily charged with coordinating and reporting on all early child and youth prevention, intervention, and treatment services for the

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[1] This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

[2] See **Addendum A**.

state. As a result of the transfer of the five programs from the department to the department of human services by House Bill 13-1117, the prevention services division (division) within the department no longer performs these functions. In addition, in 2013, the General Assembly also passed House Bill 13-1239[3], concerning the creation of a statewide youth development plan, which created the new comprehensive state plan within the department of human services to coordinate youth prevention and intervention programs and to oversee the provision of these services. House Bill 13-1239 also contained a provision that repealed language charging the department with operating these programs. However, this provision was to take effect only if House Bill 13-1117 *did not pass*.

The department has proposed the repeal of specific statutory sections that relate to the division's state plan for the delivery of prevention, intervention, and treatment services to youth throughout the state.

## Statutory Charge[4]

Because the 2013 bills addressed the repeal of language that the department proposes to repeal in the attached bill and the General Assembly did not repeal this language, it is unclear whether repealing language that relates to the charges and functions of the department concerning programs that the department no longer operates meets the Statutory Revision Committee's charge to eliminate obsolete provisions and bring the law into harmony with modern conditions.

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[3] See **Addendum B**.

[4] The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

## Proposed Bill

Staff has attached a bill draft to address the issue and repeal the obsolete language. Staff has contacted the department regarding the bill draft and the proposed repeal of language.

CHAPTER 169

# HUMAN SERVICES - SOCIAL SERVICES

**HOUSE BILL 13-1117**

BY REPRESENTATIVE(S) Hamner, Ferrandino, Labuda, May, Peniston, Primavera, Singer, Tyler, Young, Court, Fields, Fischer, Ginal, Hullinghorst, Kraft-Tharp, Lebsock, Mitsch Bush, Moreno, Pabon, Rosenthal, Salazar, Schafer, Williams, Ryden; also SENATOR(S) Hodge and Kerr, Aguilar, Heath, Hudak, Johnston, Kefalas, Nicholson, Schwartz, Todd, Ulibarri, Jahn, Newell, Tochtrop.

## AN ACT

**CONCERNING ALIGNMENT OF CHILD DEVELOPMENT PROGRAMS, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly finds that:

(a) The early childhood system in Colorado includes four system sectors that address the needs of children, including early learning, child health, child mental health, and family support and parent education. Research confirms that these areas, along with prenatal health, are interrelated and that it is difficult, if not impossible, to separate children's emotional, behavioral, and learning needs from their prenatal and child health and wellness or from the involvement and support of their families.

(b) The programs that serve the maternal health, child health, and early childhood needs of children and their families across the four system sectors often continue providing services or work with other programs to provide a continuum of services to ensure that, as they develop, these children have access to the services and supports they need to grow into healthy, educated adults who are well-prepared to positively contribute to their society;

(c) The support systems and services that comprise Colorado's early childhood system have historically been spread across multiple public agencies, including but not limited to the departments of education, human services, public health and environment, health care policy and financing, and higher education, as well as various private entities;

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(d) Resources that are available for services and supports for families and children are derived from several public funding sources. Each source has its own program standards and eligibility, reporting, data-tracking, and funding requirements, making it very difficult for programs that provide services and supports for children to be able to efficiently combine the various funding sources.

(e) The community of early childhood services providers in Colorado has for several years worked to establish a coordinated structure within state government to provide and coordinate the provision of services across the four system sectors for pregnant women, children from birth to eight years of age, and their families. Coordinating these services through a single system will:

(I) Enhance the quality of early childhood services by holding programs accountable to guidelines, standards, and assessments of service delivery and outcomes and implementing a unified approach to resource allocation and referral for families to services and programs;

(II) Strengthen the link between state-level programs and services and the local system of service delivery that exists in counties throughout the state;

(III) Improve the efficiency, effectiveness, and quality in delivering early childhood services to pregnant women, children, and their families at the state and local levels;

(IV) Provide greater support for and improve the ability of program and service providers to work with state and local early childhood programs in providing services to pregnant women, children, and their families;

(V) Improve coordination among state departments with regard to the programs that serve pregnant women, children, and their families and that are implemented within each department; and

(VI) Improve the coordination of the state's efforts at early identification, promotion, prevention, and intervention with regard to the full spectrum of services provided to pregnant women, children, and their families across the four system sectors of early learning, child health, child mental health, and family support and parent education. Improving the coordination among these programs will improve the state's ability to set a solid foundation for families and their children as they continue to develop academically, physically, emotionally, and socially.

(2) Therefore, the general assembly finds that it is in the best interests of the children of the state and their families for an office to exist within the department of human services that will coordinate the wide range of maternal health, child health, and early childhood programs that are in the department of human services and in other state departments with the goal of improving outcomes for children and their families.

**registry.** (2) The state department, under the supervision of the executive director, shall:

(t) ADMINISTER EARLY CHILDHOOD PROGRAMS IN ACCORDANCE WITH STATUTE AND RULE AND, WHERE APPLICABLE, REVIEW APPLICATIONS SUBMITTED BY ENTITIES TO RECEIVE FUNDING THROUGH THE PROGRAMS, AWARD GRANTS BASED ON THE APPLICATIONS, OR IN THE CASE OF THE NURSE HOME VISITOR PROGRAM, APPLICATIONS SELECTED BY THE HEALTH SCIENCES CENTER, AND NOTIFY THE STATE BOARD OF THE GRANTS AWARDED AND THE AMOUNTS OF THE GRANTS. PARTICIPATION IN AN EARLY CHILDHOOD PROGRAM ADMINISTERED BY THE STATE DEPARTMENT IS VOLUNTARY. THE EARLY CHILDHOOD PROGRAMS ARE NOT DESIGNED OR INTENDED TO INTERFERE WITH THE RIGHTS OF PARENTS TO RAISE THEIR CHILDREN.

**SECTION 12.** In Colorado Revised Statutes, 25-20.5-101, **amend** (1) (a), (1)

(c), and (2) as follows:

**25-20.5-101. Legislative declaration.** (1) The general assembly hereby finds that:

(a) The state operates or state agencies provide funding for a wide variety of prevention, intervention, and treatment programs designed to assist ~~children and~~ youth in achieving an education, in making informed choices about their health and well-being, in avoiding the juvenile and criminal justice systems, and, generally, in becoming healthy, law-abiding, contributing members of society;

(c) There is some overlap among prevention, intervention, and treatment programs, sometimes resulting in the potentially inefficient use of state resources which may result in the provision of fewer services to ~~children and~~ youth;

(2) The general assembly therefore finds that it is in the best interests of the ~~children,~~ youth and families of the state to create a single division in the department of public health and environment to operate prevention and intervention programs and to oversee the provision of prevention, intervention, and treatment services through federally and state-funded prevention, intervention, and treatment programs to ensure collaboration among programs and the availability of a continuum of services for ~~children and~~ youth.

**SECTION 13.** In Colorado Revised Statutes, 25-20.5-102, **amend** (5) and (6) as follows:

**25-20.5-102. Definitions.** As used in this article, unless the context otherwise requires:

(5) "Prevention, intervention, and treatment services" means services that are designed to promote the well-being of ~~children and~~ youth and their families by decreasing high-risk behaviors, strengthening healthy behaviors, and promoting family stability.

(6) "State plan" means the state plan for delivery of prevention, intervention, and treatment services to ~~children and~~ youth throughout the state adopted by the division pursuant to section 25-20.5-105.

**SECTION 14.** In Colorado Revised Statutes, 25-20.5-104, **amend** (1) (a), (1) (e), and (2) as follows:

**25-20.5-104. Functions of division.** (1) The division has the following functions:

(a) On or before February 1, 2001, to submit to the executive director ~~to the Tony Grampsas youth services board,~~ and to the governor for approval a state plan for delivery of prevention, intervention, and treatment services to ~~children and~~ youth throughout the state as provided in section 25-20.5-105, and to biennially review the state plan and submit revisions as provided by rule of the state board of health to the executive director ~~the Tony Grampsas youth services board,~~ and the governor for approval;

(e) To operate the prevention and intervention programs specified in this article and such other prevention and intervention programs as may be created in or transferred to the division by executive order to be funded solely by nonstate moneys, including but not limited to reviewing applications submitted by entities to receive funding through said programs, awarding grants based on such applications, and notifying the state board of health of the grants awarded and the amounts of said grants; ~~except that the Tony Grampsas youth services board shall review applications and award grants for the programs specified in part 2 of this article;~~

(2) In addition to any prevention and intervention programs created in or transferred to the division by executive order and any prevention and intervention programs transferred to the division by the executive director pursuant to subsection (4) of this section, the division shall operate the following prevention and intervention programs:

(a) ~~The Tony Grampsas youth services program created in section 25-20.5-201;~~

(b) ~~The Colorado youth mentoring services program created in section 25-20.5-203;~~

(c) ~~The Colorado student dropout prevention and intervention program created in section 25-20.5-204;~~

(d) ~~The Colorado children's trust fund created in article 3.5 of title 19, C.R.S.;~~

(e) ~~The family resource center program created in section 26-18-104, C.R.S.;~~

(f) The school-based health center grant program created in part 5 of this article.

**SECTION 15.** In Colorado Revised Statutes, 25-20.5-105, **amend** (1) introductory portion and (2) as follows:

**25-20.5-105. State plan for delivery of prevention, intervention, and treatment services to youth - contents.** (1) On or before February 1, 2001, the division shall submit to the governor ~~the Tony Grampsas youth services board,~~ and the executive director for approval a state plan for delivery of prevention, intervention, and treatment services to ~~children and~~ youth throughout the state. The state plan shall apply to all prevention, intervention, and treatment programs that receive state or federal funds and are operated within the state. The state plan shall be designed to coordinate and provide direction for the delivery of prevention, intervention, and treatment services through the various prevention and intervention programs operated by the division and the prevention, intervention, and treatment programs operated by other state departments and to ensure collaboration among programs that results in a continuum of services available to ~~children and~~ youth throughout the state. At a minimum, the state plan shall:

(2) The division shall biennially review and revise the state plan as necessary to ensure the most efficient and effective delivery of prevention, intervention, and treatment services throughout the state. The division shall submit any revised state plan as provided by rule of the state board of health to the governor ~~the Tony~~

~~Grampsas youth services board,~~ and the executive director for approval.

**SECTION 16.** In Colorado Revised Statutes, 25-20.5-106, **amend** (1) and (3) as follows:

**25-20.5-106. State board of health - rules - program duties.** (1) The state board of health created in section 25-1-103 shall promulgate rules as necessary for the operation of the division, including but not limited to rules establishing the time frames for review of the state plan and submittal of any revised state plan to the governor ~~the Tony Grampsas youth services board,~~ and the executive director and to the entities specified in section 25-20.5-105 (4).

(3) The state board of health shall act as the program board for the oversight of the prevention and intervention programs operated by the division. ~~except that the Tony Grampsas youth services board shall act as the program board for the programs specified in part 2 of this article and for any additional programs specified by executive order.~~

CHAPTER 307

# HEALTH AND ENVIRONMENT

**HOUSE BILL 13-1239**

BY REPRESENTATIVE(S) McCann, Exum, Fischer, Ginal, Hamner, Hullinghorst, Kraft-Tharp, Lee, Melton, Mitsch Bush, Moreno, Primavera, Rosenthal, Salazar, Schafer, Young, Court, Duran, Fields, Gerou, Labuda, Lebsock, Peniston, Ryden, Singer, Tyler, Vigil, Williams;
also SENATOR(S) Hodge, Giron, Heath, Jones, Kefalas, Newell, Nicholson, Schwartz, Todd, Ulibarri.

## AN ACT

**CONCERNING THE CREATION OF A STATEWIDE YOUTH DEVELOPMENT PLAN, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly hereby finds and declares that in 2011 alone:

(a) Fifteen and a half percent of high school students in Colorado carried a weapon to school in the previous thirty days;

(b) There were more than thirty-four thousand juvenile arrests in Colorado;

(c) Four hundred thirty-one juveniles were arrested for weapons violations, and more than thirty-five hundred juveniles were arrested for drug violations;

(d) Nearly twenty-five percent of high school students in Colorado were involved in fights during the previous year; and

(e) Sixty-seven thousand young people in Colorado ages eighteen to twenty-four were unemployed, not attending school, and had no degree beyond a high school diploma.

(2) The general assembly also finds that the Tony Grampsas youth services program was established in 1994 to provide statewide funding for community-based programs that target youth and their families for intervention services in an effort to reduce incidents of youth crime and violence. Further, the Tony Grampsas youth

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

services program was established to promote prevention and education programs that are designed to reduce the occurrence and reoccurrence of child abuse and neglect and to reduce the need for state intervention in those cases.

(3) Therefore, the general assembly declares that it is in the best interests of the people of Colorado to develop a comprehensive state plan for youth development in order to quantify existing and needed services and to align existing limited resources to help promote positive youth development.

(4) The general assembly further finds that it is in the best interest of the people of Colorado for the department of human services to coordinate prevention and intervention programs and to oversee the provision of these services to ensure collaboration among communities and programs, with the goal of ensuring the availability of a continuum of services for youth.

**SECTION 2.** In Colorado Revised Statutes, **add** 26-1-111.3 as follows:

**26-1-111.3. Activities of the state department under the supervision of the executive director - Colorado state youth development plan - creation - definitions.** (1) (a) SUBJECT TO AVAILABLE FUNDING, THE STATE DEPARTMENT, IN COLLABORATION WITH THE TONY GRAMPSAS YOUTH SERVICES BOARD, CREATED IN SECTION 26-6.8-103, SHALL CONVENE A GROUP OF INTERESTED PARTIES TO CREATE A COLORADO STATE YOUTH DEVELOPMENT PLAN. THE GOALS OF THE PLAN ARE TO IDENTIFY KEY ISSUES AFFECTING YOUTH AND ALIGN STRATEGIC EFFORTS TO ACHIEVE POSITIVE OUTCOMES FOR ALL YOUTH.

(b) THE PLAN MUST:

(I) IDENTIFY INITIATIVES AND STRATEGIES, ORGANIZATIONS, AND GAPS IN COVERAGE THAT IMPACT YOUTH DEVELOPMENT OUTCOMES;

(II) IDENTIFY SERVICES, FUNDING, AND PARTNERSHIPS NECESSARY TO ENSURE THAT YOUTH HAVE THE MEANS AND THE SOCIAL AND EMOTIONAL SKILLS TO SUCCESSFULLY TRANSITION INTO ADULTHOOD;

(III) DETERMINE WHAT IS NECESSARY IN TERMS OF COMMUNITY INVOLVEMENT AND DEVELOPMENT TO ENSURE YOUTH SUCCEED;

(IV) DEVELOP AN OUTLINE OF YOUTH SERVICE ORGANIZATIONS BASED ON, BUT NOT LIMITED TO, DEMOGRAPHICS, CURRENT SERVICES AND CAPACITY, AND COMMUNITY INVOLVEMENT;

(V) IDENTIFY SUCCESSFUL YOUTH DEVELOPMENT STRATEGIES NATIONALLY AND IN COLORADO THAT COULD BE REPLICATED BY COMMUNITY PARTNERS AND ENTITIES ACROSS THE STATE; AND

(VI) CREATE A SHARED VISION FOR HOW A STRONG YOUTH DEVELOPMENT NETWORK WOULD BE SHAPED AND MEASURED.

(c) THE PLAN MUST INCLUDE A BASELINE MEASUREMENT OF YOUTH ACTIVITIES, DEVELOPED USING AVAILABLE DATA AND RESOURCES. DATA AND RESOURCES MAY

BE COLLECTED FROM, BUT NEED NOT BE LIMITED TO, THE FOLLOWING:

(I) AN EXISTING YOUTH RISK BEHAVIOR SURVEILLANCE SYSTEM THAT MONITORS HEALTH-RISK BEHAVIORS THAT CONTRIBUTE TO THE LEADING CAUSES OF DEATH AND DISABILITY AMONG YOUTH, INCLUDING:

(A) BEHAVIORS THAT CONTRIBUTE TO UNINTENTIONAL INJURIES AND VIOLENCE;

(B) SEXUAL BEHAVIORS THAT CONTRIBUTE TO UNINTENDED PREGNANCY AND SEXUALLY TRANSMITTED INFECTIONS, INCLUDING HIV;

(C) ALCOHOL AND OTHER DRUG USE;

(D) TOBACCO USE;

(E) UNHEALTHY DIETARY BEHAVIORS; AND

(F) INADEQUATE PHYSICAL ACTIVITY;

(II) THE COLORADO YOUTH ADVISORY COUNCIL, CREATED IN SECTION 2-2-1302, C.R.S.;

(III) THE STATE DEPARTMENT OF EDUCATION;

(IV) THE STATE DEPARTMENT OF HIGHER EDUCATION, TO ASSESS WORKFORCE READINESS AND STUDENT ACHIEVEMENT AS YOUTH TRANSITION THROUGH THE SECONDARY AND POSTSECONDARY EDUCATION SYSTEMS;

(V) THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT;

(VI) THE STATE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING;

(VII) THE STATE DEPARTMENT OF HUMAN SERVICES;

(VIII) THE STATE DEPARTMENT OF LABOR AND EMPLOYMENT;

(IX) THE STATE DEPARTMENT OF PUBLIC SAFETY; AND

(X) THE STATE JUDICIAL DEPARTMENT.

(2) THE STATE DEPARTMENT SHALL BE RESPONSIBLE FOR ANY COSTS ASSOCIATED WITH THE DEVELOPMENT OF THE PLAN AND IS NOT REQUIRED TO IMPLEMENT THIS SECTION UNTIL ADEQUATE FUNDING IS SECURED.

(3) THE STATE DEPARTMENT, IN COLLABORATION WITH THE TONY GRAMPSAS YOUTH SERVICES BOARD, CREATED IN SECTION 26-6.8-103, SHALL COMPLETE THE PLAN ON OR BEFORE SEPTEMBER 30, 2014, AND SHALL UPDATE THE PLAN BIENNALLY THEREAFTER.

(4) BEGINNING IN JANUARY 2015, AND EVERY JANUARY THEREAFTER, THE DEPARTMENT SHALL REPORT PROGRESS ON THE DEVELOPMENT AND

IMPLEMENTATION OF THE PLAN AS PART OF ITS "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT" HEARING REQUIRED BY SECTION 2-7-203, C.R.S.

(5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ENTITY" MEANS ANY LOCAL GOVERNMENT, STATE PUBLIC OR NONSECTARIAN SECONDARY SCHOOL, CHARTER SCHOOL, GROUP OF PUBLIC OR NONSECTARIAN SECONDARY SCHOOLS, SCHOOL DISTRICT OR GROUP OF SCHOOL DISTRICTS, BOARD OF COOPERATIVE SERVICES, STATE INSTITUTION OF HIGHER EDUCATION, THE COLORADO NATIONAL GUARD, STATE AGENCY, STATE-OPERATED PROGRAM, PRIVATE NONPROFIT ORGANIZATION, OR NONPROFIT COMMUNITY-BASED ORGANIZATION.

(b) "PLAN" MEANS THE COLORADO STATE YOUTH DEVELOPMENT PLAN CREATED PURSUANT TO THIS SECTION.

(c) "YOUTH" MEANS AN INDIVIDUAL AT LEAST NINE YEARS OF AGE AND NO MORE THAN TWENTY-ONE YEARS OF AGE.

(d) "YOUTH SERVICE ORGANIZATION" MEANS AN ENTITY THAT IS COMMUNITY-BASED AND:

(I) PROMOTES INNOVATIVE AND EVIDENCE-BASED STRATEGIES FOR POSITIVE YOUTH DEVELOPMENT AND FOR REDUCING THE OCCURRENCE AND REOCCURRENCE OF CHILD ABUSE AND NEGLECT;

(II) PROMOTES INNOVATIVE PRIMARY PREVENTION AND INTERVENTION SERVICES TO YOUTH AND THEIR FAMILIES IN AN EFFORT TO DECREASE HIGH-RISK BEHAVIOR, INCLUDING BUT NOT LIMITED TO YOUTH CRIME AND VIOLENCE; OR

(III) PROMOTES INNOVATIVE STRATEGIES TO AT-RISK STUDENTS AND THEIR FAMILIES IN AN EFFORT TO REDUCE THE DROPOUT RATE IN SECONDARY SCHOOLS.

**SECTION 3.** In Colorado Revised Statutes, 26-6.8-102, **amend as added by House Bill 13-1117** (2) (a) and (2) (b) as follows:

**26-6.8-102. Tony Grampsas youth services program - creation - standards - applications.** (2) (a) ~~Subject to the designation in paragraph (b) of this subsection (2),~~ The board shall choose those entities that will receive grants through the Tony Grampsas youth services program and the amount of each grant. The state department shall ADMINISTER THE GRANTS AWARDED AND monitor the effectiveness of programs that receive ~~funds~~ GRANTS through the Tony Grampsas youth services program.

(b) ~~Each year, no less than twenty percent of the appropriation shall be designated and used exclusively for programs designed for children younger than nine years of age. The state department shall administer the grants awarded to programs described in this paragraph (b) and shall monitor the effectiveness of the programs.~~ FOR ONE GRANT CYCLE, UP TO THREE HUNDRED THOUSAND DOLLARS OF THE APPROPRIATION MADE FOR THE PURPOSE SET FORTH IN THIS PARAGRAPH (b) MAY

BE USED TO AWARD TECHNICAL ASSISTANCE GRANTS FOR COMMUNITY-BASED PREVENTION AND INTERVENTION ORGANIZATIONS THAT WORK WITH YOUTH. ORGANIZATIONS THAT APPLY FOR MONEYS PURSUANT TO THIS PARAGRAPH (b) MUST USE THE MONEYS TO ASSIST WITH INDEPENDENT CERTIFICATION AS AN EVIDENCE-BASED PROGRAM. EVIDENCE-BASED PROGRAMS MUST DEMONSTRATE AN ABILITY TO MEET RIGOROUS REQUIREMENTS FOR EVALUATION AND EFFECTIVENESS TO REFLECT AN ABILITY TO CHANGE TARGETED BEHAVIORS AND PROMOTE POSITIVE YOUTH DEVELOPMENT OUTCOMES.

**SECTION 4.** In Colorado Revised Statutes, **repeal** 25-20.5-101, 25-20.5-102, 25-20.5-104, 25-20.5-105, 25-20.5-106, 25-20.5-107, 25-20.5-108, and 25-20.5-109.

**SECTION 5.** In Colorado Revised Statutes, 26-1-111, **amend** (2) (s); and **add** (2) (u) as follows:

**26-1-111. Activities of the state department under the supervision of the executive director - cash fund - report - rules - statewide adoption resource registry.** (2) The state department, under the supervision of the executive director, shall:

(s) Promulgate rules in accordance with section 19-3-211, C.R.S., for establishing a conflict resolution process for resolving grievances against the county departments concerning responses to reports of child abuse and neglect and the performance of duties pursuant to article 3 of title 19, C.R.S. ~~Such~~ THE rules ~~shall~~ MUST take into account and allow for any subsequent locally developed grievance procedures that apply to a locally restructured human services system to ensure consistency within the system.

(u) COORDINATE PREVENTION AND INTERVENTION PROGRAMS FOCUSED ON POSITIVE YOUTH DEVELOPMENT IN ACCORDANCE WITH STATE LAW AND RULES. THE COORDINATION MUST INCLUDE THE STATE YOUTH DEVELOPMENT PLAN DEVELOPED PURSUANT TO SECTION 26-6.8-103.5 THAT IDENTIFIES KEY ISSUES AFFECTING YOUTH TO ALIGN STRATEGIC EFFORTS AND ACHIEVE POSITIVE OUTCOMES FOR YOUTH.

**SECTION 6.** In Colorado Revised Statutes, 26-18-104, **amend** (1) (b) as follows:

**26-18-104. Program created.** (1) (b) The division shall operate the family resource center program in accordance with the provisions of this article. ~~the requirements for prevention, intervention, and treatment programs specified in article 20.5 of title 25, C.R.S., and the rules for prevention, intervention, and treatment programs adopted by the state board of health pursuant to section 25-20.5-106, C.R.S.~~ In addition, the division may establish any other procedures necessary to implement the program, including establishing the procedure for the submittal of grant applications by community applicants seeking to establish a family resource center or by a family resource center applying for a grant for continued operation of a family resource center.

**SECTION 7.** In Colorado Revised Statutes, 24-44.7-103, **repeal** (3) (c) as follows:

**24-44.7-103. Early childhood leadership commission - duties.** (3) In fulfilling its duties, the commission shall collaborate, at a minimum, with:

(c) ~~The prevention leadership council created in the department of public health and environment through the implementation of section 25-20.5-107, C.R.S.;~~

**SECTION 8.** In Colorado Revised Statutes, 24-32-723, **amend** (4) (a) as follows:

**24-32-723. Office of homeless youth services - creation - function - duties - definitions.** (4) (a) In providing the services described in this section, the office of homeless youth services is strongly encouraged to work with the executive directors, or their designees, of the ~~departments specified in section 25-20.5-108 (6), C.R.S., as well as the~~ Colorado department of public health and environment, the judicial department, private nonprofit and not-for-profit organizations, appropriate federal departments, and other key stakeholders in the community.

**SECTION 9.** In Colorado Revised Statutes, 26-18-105, **repeal as amended by House Bill 13-1117** (2).

**SECTION 10.** In Colorado Revised Statutes, 25-20.5-202, **add** (6) as follows:

**25-20.5-202. Tony Grampsas youth services board - members - duties - state youth development plan - creation - definitions.** (6) (a) SUBJECT TO AVAILABLE FUNDING, THE BOARD SHALL CONVENE A GROUP OF INTERESTED PARTIES TO CREATE A COLORADO STATE YOUTH DEVELOPMENT PLAN. THE GOALS OF THE PLAN ARE TO IDENTIFY KEY ISSUES AFFECTING YOUTH AND ALIGN STRATEGIC EFFORTS TO ACHIEVE POSITIVE OUTCOMES FOR ALL YOUTH.

(b) THE PLAN MUST:

(I) IDENTIFY INITIATIVES AND STRATEGIES, ORGANIZATIONS, AND GAPS IN COVERAGE THAT IMPACT YOUTH DEVELOPMENT OUTCOMES;

(II) IDENTIFY SERVICES, FUNDING, AND PARTNERSHIPS NECESSARY TO ENSURE THAT YOUTH HAVE THE MEANS AND THE SOCIAL AND EMOTIONAL SKILLS TO SUCCESSFULLY TRANSITION INTO ADULTHOOD;

(III) DETERMINE WHAT IS NECESSARY IN TERMS OF COMMUNITY INVOLVEMENT AND DEVELOPMENT TO ENSURE YOUTH SUCCEED;

(IV) DEVELOP AN OUTLINE OF YOUTH SERVICE ORGANIZATIONS BASED ON, BUT NOT LIMITED TO, DEMOGRAPHICS, CURRENT SERVICES AND CAPACITY, AND COMMUNITY INVOLVEMENT;

(V) IDENTIFY SUCCESSFUL YOUTH DEVELOPMENT STRATEGIES NATIONALLY AND IN COLORADO THAT COULD BE REPLICATED BY COMMUNITY PARTNERS AND ENTITIES ACROSS THE STATE; AND

(VI) CREATE A SHARED VISION FOR HOW A STRONG YOUTH DEVELOPMENT NETWORK WOULD BE SHAPED AND MEASURED.

(c) THE PLAN MUST INCLUDE A BASELINE MEASUREMENT OF YOUTH ACTIVITIES, DEVELOPED USING AVAILABLE DATA AND RESOURCES. DATA AND RESOURCES MAY BE COLLECTED FROM, BUT NEED NOT BE LIMITED TO, THE FOLLOWING:

(I) AN EXISTING YOUTH RISK BEHAVIOR SURVEILLANCE SYSTEM THAT MONITORS HEALTH-RISK BEHAVIORS THAT CONTRIBUTE TO THE LEADING CAUSES OF DEATH AND DISABILITY AMONG YOUTH, INCLUDING:

(A) BEHAVIORS THAT CONTRIBUTE TO UNINTENTIONAL INJURIES AND VIOLENCE;

(B) SEXUAL BEHAVIORS THAT CONTRIBUTE TO UNINTENDED PREGNANCY AND SEXUALLY TRANSMITTED INFECTIONS, INCLUDING HIV;

(C) ALCOHOL AND OTHER DRUG USE;

(D) TOBACCO USE;

(E) UNHEALTHY DIETARY BEHAVIORS; AND

(F) INADEQUATE PHYSICAL ACTIVITY;

(II) THE COLORADO YOUTH ADVISORY COUNCIL, CREATED IN SECTION 2-2-1302, C.R.S.;

(III) THE STATE DEPARTMENT OF EDUCATION;

(IV) THE STATE DEPARTMENT OF HIGHER EDUCATION, TO ASSESS WORKFORCE READINESS AND STUDENT ACHIEVEMENT AS YOUTH TRANSITION THROUGH THE SECONDARY AND POSTSECONDARY EDUCATION SYSTEMS;

(V) THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT;

(VI) THE STATE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING;

(VII) THE STATE DEPARTMENT OF HUMAN SERVICES;

(VIII) THE STATE DEPARTMENT OF LABOR AND EMPLOYMENT;

(IX) THE STATE DEPARTMENT OF PUBLIC SAFETY; AND

(X) THE STATE JUDICIAL DEPARTMENT.

(d) THE STATE DEPARTMENT SHALL BE RESPONSIBLE FOR ANY COSTS ASSOCIATED WITH THE DEVELOPMENT OF THE PLAN AND IS NOT REQUIRED TO IMPLEMENT THIS SECTION UNTIL ADEQUATE FUNDING IS SECURED.

(e) THE BOARD SHALL COMPLETE THE PLAN ON OR BEFORE SEPTEMBER 30, 2014, AND SHALL UPDATE THE PLAN BIENNALLY THEREAFTER.

(f) BEGINNING IN JANUARY 2015, AND EVERY JANUARY THEREAFTER, THE DEPARTMENT SHALL REPORT PROGRESS ON THE DEVELOPMENT AND

IMPLEMENTATION OF THE PLAN AS PART OF ITS "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT" HEARING REQUIRED BY SECTION 2-7-203, C.R.S.

(g) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "ENTITY" MEANS ANY LOCAL GOVERNMENT, STATE PUBLIC OR NONSECTARIAN SECONDARY SCHOOL, CHARTER SCHOOL, GROUP OF PUBLIC OR NONSECTARIAN SECONDARY SCHOOLS, SCHOOL DISTRICT OR GROUP OF SCHOOL DISTRICTS, BOARD OF COOPERATIVE SERVICES, STATE INSTITUTION OF HIGHER EDUCATION, THE COLORADO NATIONAL GUARD, STATE AGENCY, STATE-OPERATED PROGRAM, PRIVATE NONPROFIT ORGANIZATION, OR NONPROFIT COMMUNITY-BASED ORGANIZATION.

(II) "PLAN" MEANS THE COLORADO STATE YOUTH DEVELOPMENT PLAN CREATED PURSUANT TO THIS SECTION.

(III) "YOUTH" MEANS AN INDIVIDUAL AT LEAST NINE YEARS OF AGE AND NO MORE THAN TWENTY-ONE YEARS OF AGE.

(IV) "YOUTH SERVICE ORGANIZATION" MEANS AN ENTITY THAT IS COMMUNITY-BASED AND:

(A) PROMOTES INNOVATIVE AND EVIDENCE-BASED STRATEGIES FOR POSITIVE YOUTH DEVELOPMENT AND FOR REDUCING THE OCCURRENCE AND REOCCURRENCE OF CHILD ABUSE AND NEGLECT;

(B) PROMOTES INNOVATIVE PRIMARY PREVENTION AND INTERVENTION SERVICES TO YOUTH AND THEIR FAMILIES IN AN EFFORT TO DECREASE HIGH-RISK BEHAVIOR, INCLUDING BUT NOT LIMITED TO YOUTH CRIME AND VIOLENCE; OR

(C) PROMOTES INNOVATIVE STRATEGIES TO AT-RISK STUDENTS AND THEIR FAMILIES IN AN EFFORT TO REDUCE THE DROPOUT RATE IN SECONDARY SCHOOLS.

**SECTION 11.** In Colorado Revised Statutes, 25-20.5-201, **amend** (2) (a) and (2) (b) as follows:

**25-20.5-201. Tony Grampsas youth services program - creation - standards - applications.** (2) (a) The Tony Grampsas youth services program shall be administered through the division. ~~Subject to the designation in paragraph (b) of this subsection (2),~~ The Tony Grampsas youth services board created in section 25-20.5-202 shall choose those entities that will receive grants through the Tony Grampsas youth services program and the amount of each grant. In addition, the division shall monitor the effectiveness of programs that receive funds through the Tony Grampsas youth services program.

(b) Any grant awarded through the Tony Grampsas youth services program shall be paid from moneys appropriated pursuant to paragraph (c) of this subsection (2) or out of the general fund for such program. ~~Each year, no less than twenty percent of the appropriation shall be designated and used exclusively for programs designed for children younger than nine years of age.~~ The board, in accordance with the

timelines adopted pursuant to section 25-20.5-202 (3), shall submit a list of the entities chosen to receive grants to the governor for approval. The governor shall either approve or disapprove the entire list of entities by responding to the board within twenty days. If the governor has not responded to the board within twenty days after receipt of the list, the list shall be deemed approved. No grants shall be awarded through the Tony Grampsas youth services program without the prior approval of the governor.

**SECTION 12. Appropriation - adjustments to 2013 long bill.** (1) For the implementation of this act, appropriations made in the annual general appropriation act to the department of public health and environment for the fiscal year beginning July 1, 2013, are adjusted as follows:

(a) The general fund appropriation for the prevention services division, interagency prevention programs coordination, is decreased by $133,284 and 2.0 FTE.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of human services, for the fiscal year beginning July 1, 2013, the sum of $133,284 and 1.0 FTE, or so much thereof as may be necessary, for allocation to the division of child welfare for the interagency prevention programs coordination line item related to the implementation of this act.

**SECTION 13. Effective date.** (1) Except as otherwise provided in this section, this act takes effect July 1, 2013.

(2) Sections 2 and 3, 5 to 9, and 12 of this act take effect only if House Bill 13-1117 becomes law and take effect either upon the effective date of this act or House Bill 13-1117, whichever is later.

(3) Sections 4, 10, and 11 of this act take effect only if House Bill 13-1117 does not become law.

**SECTION 14. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 28, 2013

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

DRAFT 2.28.19

**DRAFT**

LLS NO. 19-0124.01 Kristen Forrestal x4217 **COMMITTEE BILL**

**Statutory Revision Committee**

**BILL TOPIC:** "Repeal CDPHE Youth Services Statutes"

## A BILL FOR AN ACT

**CONCERNING CERTAIN CONFORMING AMENDMENTS NECESSITATED BY THE TRANSFER OF CERTAIN PROGRAMS TO THE DEPARTMENT OF HUMAN SERVICES FROM THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO HOUSE BILL 13-1117.**

### Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/.)*

**Statutory Revision Committee.** In 2013, certain functions related to prevention, intervention, and treatment services for youth throughout the state (youth services) were transferred from the department of public

health and environment (CDPHE) to the department of human services. The bill repeals statutory language requiring CDPHE to provide youth services.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** The general assembly declares that the purpose of this act is to repeal obsolete statutory provisions relating to the Colorado department of public health and environment. The general assembly further declares that repealing these statutory provisions does not alter the scope or applicability of the remaining statutes.

**SECTION 2.** In Colorado Revised Statutes, **repeal** 25-20.5-101 as follows:

**25-20.5-101. Legislative declaration.** ~~(1) The general assembly hereby finds that:~~

~~(a) The state operates or state agencies provide funding for a wide variety of prevention, intervention, and treatment programs designed to assist youth in achieving an education, in making informed choices about their health and well-being, in avoiding the juvenile and criminal justice systems, and, generally, in becoming healthy, law-abiding, contributing members of society;~~

~~(b) These prevention, intervention, and treatment programs are operated by or funded through several departments within the executive branch, and this high degree of decentralization often makes communications between and among these departments and programs difficult;~~

~~(c) There is some overlap among prevention, intervention, and treatment programs, sometimes resulting in the potentially inefficient use~~

~~of state resources which may result in the provision of fewer services to youth;~~

~~(d) The dispersion of prevention, intervention, and treatment programs among state departments makes it difficult for both state employees and the public to determine what programs are available and what services are provided through prevention, intervention, and treatment programs that are operated by or funded through state agencies;~~

~~(e) The term limitations placed on persons who serve in public office, including members of the general assembly, make it increasingly important that information concerning the existence, funding, and operation of prevention, intervention, and treatment programs for youth be readily accessible;~~

~~(f) In the area of prevention, intervention, and treatment services, there is a critical need for local and state programs to overcome barriers and the categorical requirements of various funding sources in order to design and implement programs that provide a more comprehensive response to the needs of Colorado youth;~~

~~(g) Research demonstrates that program coordination among multiple systems for the purpose of improving prevention, intervention, and treatment services results in significant positive outcomes;~~

~~(h) A unified, coordinated response to community-based programs for the delivery of prevention, intervention, and treatment services has proven to be an effective and efficient state response to local programs and their needs.~~

~~(2) The general assembly therefore finds that it is in the best interests of the youth and families of the state to create a single division in the department of public health and environment to operate prevention~~

~~and intervention programs and to oversee the provision of prevention, intervention, and treatment services through federally and state-funded prevention, intervention, and treatment programs to ensure collaboration among programs and the availability of a continuum of services for youth.~~

**SECTION 3.** In Colorado Revised Statutes, 25-20.5-102, **amend** the introductory portion; and **repeal** (6) as follows:

**25-20.5-102. Definitions.** As used in this ~~article~~ ARTICLE 20.5, unless the context otherwise requires:

(6) ~~"State plan" means the state plan for delivery of prevention, intervention, and treatment services to youth throughout the state adopted by the division pursuant to section 25-20.5-105.~~

**SECTION 4.** In Colorado Revised Statutes, 25-20.5-104, **amend** (1)(g); and **repeal** (1)(a) and (1)(b) as follows:

**25-20.5-104. Functions of division.** (1) The division has the following functions:

(a) ~~On or before February 1, 2001, to submit to the executive director and to the governor for approval a state plan for delivery of prevention, intervention, and treatment services to youth throughout the state as provided in section 25-20.5-105, and to biennially review the state plan and submit revisions as provided by rule of the state board of health to the executive director and the governor for approval;~~

(b) ~~To identify performance indicators for prevention, intervention, and treatment programs based on the standards adopted by the state board of health pursuant to section 25-20.5-106 (2)(d), and to review, as provided in section 25-20.5-108, all prevention, intervention, and treatment programs operated by the division and by other state departments;~~

(g) To periodically review the federal funding guidelines for federal prevention, intervention, and treatment programs and to seek the maximum flexibility in the use of federal ~~moneys~~ MONEY in funding prevention, intervention, and treatment programs; ~~provided through the state plan;~~

**SECTION 5.** In Colorado Revised Statutes, **repeal** 25-20.5-105 as follows:

**25-20.5-105. State plan for delivery of prevention, intervention, and treatment services to youth - contents.** ~~(1) On or before February 1, 2001, the division shall submit to the governor and the executive director for approval a state plan for delivery of prevention, intervention, and treatment services to youth throughout the state. The state plan shall apply to all prevention, intervention, and treatment programs that receive state or federal funds and are operated within the state. The state plan shall be designed to coordinate and provide direction for the delivery of prevention, intervention, and treatment services through the various prevention and intervention programs operated by the division and the prevention, intervention, and treatment programs operated by other state departments and to ensure collaboration among programs that results in a continuum of services available to youth throughout the state. At a minimum, the state plan shall:~~

~~(a) Target and prioritize community prevention, intervention, and treatment services needs throughout the state;~~

~~(b) Specify the standards for and measurable outcomes anticipated to be achieved by prevention, intervention, and treatment programs that receive state and federal funds and the outcomes to be achieved through the coordination of said prevention, intervention, and treatment programs;~~

~~(c) Identify all state- and community-based prevention, intervention, and treatment programs that are receiving state and federal funds during the fiscal years for which the plan is submitted and the schedule for review of said prevention, intervention, and treatment programs;~~

~~(d) Identify the methods by which the division shall encourage collaboration at the local level among public and private entities, including but not limited to private for-profit and nonprofit providers and faith-based services providers, in providing prevention, intervention, and treatment services;~~

~~(e) Include any other information required by rule of the state board of health.~~

~~(2) The division shall biennially review and revise the state plan as necessary to ensure the most efficient and effective delivery of prevention, intervention, and treatment services throughout the state. The division shall submit any revised state plan as provided by rule of the state board of health to the governor and the executive director for approval.~~

~~(3) In preparing the state plan and biennial revisions to the state plan, the division shall hold at least two public meetings to receive input from members of the public and from state agencies and entities operating prevention, intervention, and treatment programs.~~

~~(4) On or before March 15, 2001, the governor and the executive director shall submit copies of the approved state plan to the general assembly, to each state department that operates a prevention, intervention, and treatment program, and to each entity that will receive state or federal funds for the operation of a prevention, intervention, and~~

~~treatment program during the fiscal years for which the state plan is prepared. The division shall provide copies of the approved state plan to any person upon request. The governor and the executive director shall submit copies of any approved revised state plans as provided by rule of the state board of health.~~

**SECTION 6.** In Colorado Revised Statutes, **repeal** 25-20.5-106 as follows:

**25-20.5-106. State board of health - rules - program duties.** ~~(1) The state board of health created in section 25-1-103 shall promulgate rules as necessary for the operation of the division, including but not limited to rules establishing the time frames for review of the state plan and submittal of any revised state plan to the governor and the executive director and to the entities specified in section 25-20.5-105 (4).~~

~~(2) The state board of health also shall adopt rules for the uniform operation of federally and state-funded prevention, intervention, and treatment programs. In adopting such rules, the board shall take into account prevention, intervention, and treatment programs' need for responsiveness and flexibility and their need for procedures and standards that will ensure the provision of programs that meet a high standard of excellence. At a minimum such rules must include:~~

~~(a) Standardized procedures for the operation of prevention, intervention, and treatment programs, including but not limited to:~~

~~(I) The use of a system whereby entities may use a single application to seek funding from a variety of prevention, intervention, and treatment programs;~~

~~(II) The use of uniform application forms promulgated by rule of the state board of health;~~

~~(III) Uniform standards regarding the information to be submitted by entities applying for funding for community-based prevention, intervention, and treatment programs;~~

~~(IV) Uniform application dates to the extent possible for all prevention, intervention, and treatment programs;~~

~~(V) Uniform standards for selecting community-based prevention, intervention, and treatment programs that receive funding through state prevention, intervention, and treatment programs;~~

~~(VI) Uniform monitoring and reporting forms, including rules to ensure that no prevention, intervention, and treatment program is required to submit more than one annual report;~~

~~(VII) A standard database of service providers by location;~~

~~(VIII) Internet access to each prevention, intervention, and treatment program;~~

~~(IX) The ability to submit applications and report submissions through the internet; and~~

~~(X) The use of contracts to combine multiple state and federal funding sources provided by or through various state agencies as a single funding grant to a prevention, intervention, and treatment program;~~

~~(b) Uniform, minimum standards for prevention, intervention, and treatment programs, including but not limited to requirements that each prevention, intervention, and treatment program that receives state or federal funds:~~

~~(I) Provide research-based prevention, intervention, and treatment services that have been previously implemented in one or more communities with demonstrated success or that otherwise demonstrate a reasonable potential for success; and~~

~~(II) Provide outcome-based prevention, intervention, and treatment services, specifying the outcomes to be achieved; and~~

~~(III) Work collaboratively with other public and private prevention, intervention, and treatment programs in the community and with local governments, county, district, and municipal public health agencies, county departments of human or social services, and faith-based organizations in the community;~~

~~(c) Uniform standards and procedures for reviewing state and local prevention, intervention, and treatment programs that receive state or federal funds;~~

~~(d) Performance standards and measurable outcomes for state and local prevention, intervention, and treatment programs that receive state or federal funds;~~

~~(e) Criteria for determining whether a program operated by a state agency constitutes a prevention, intervention, and treatment program;~~

~~(f) A formula for calculating the amount forwarded to the division by each prevention, intervention, and treatment program to offset the costs incurred by the division in reviewing the programs.~~

~~(3) The state board of health shall act as the program board for the oversight of the prevention and intervention programs operated by the division.~~

~~(4) In addition to any other duties specified in law, the state board of health shall have the following duties:~~

~~(a) Repealed.~~

~~(b) To assist division personnel in working with communities and local elected officials to identify the communities' prevention, intervention, and treatment services needs;~~

~~(c) To assist division personnel in reviewing the performance of prevention, intervention, and treatment programs created in this article.~~

**SECTION 7.** In Colorado Revised Statutes, **repeal** 25-20.5-107 as follows:

**25-20.5-107. Memoranda of understanding - duties of executive director - program meetings.** ~~(1) The executive director shall enter into a memorandum of understanding, as described in subsection (2) of this section, with each state agency that operates a prevention, intervention, and treatment program, as identified by the division pursuant to criteria adopted by rule of the state board of health.~~

~~(2) On or before July 1, 2001, each state agency that operates a prevention, intervention, and treatment program, as identified by the division based on criteria adopted by rule of the state board of health, shall enter into a memorandum of understanding with the executive director and the division through which, at a minimum, the state agency shall agree to:~~

~~(a) Comply with the rules for the operation of prevention, intervention, and treatment programs adopted by the state board of health pursuant to section 25-20.5-106;~~

~~(b) Upon receipt of a grant application, forward a copy of the application to other appropriate prevention, intervention, and treatment programs operated by state agencies for consideration and to collaborate in providing combined program grants to appropriate community-based prevention, intervention, and treatment programs;~~

~~(c) Comply with the prevention, intervention, and treatment program reporting requirements specified in section 25-20.5-108, and to forward a percentage of the program operating funds, as determined by~~

~~rule, to the division to offset the costs incurred in reviewing the program;~~

~~(d) Seek such federal waivers as may be necessary to allow the agency to combine federal moneys available through various federal prevention, intervention, and treatment programs and to combine said moneys with moneys appropriated to fund state prevention, intervention, and treatment programs to allow the greatest flexibility in awarding combined program funding to community-based prevention, intervention, and treatment programs.~~

~~(3) Any state agency that fails to enter into and comply with a memorandum of understanding as described in subsection (2) of this section shall be ineligible for state funding for operation of a prevention, intervention, and treatment program until such time as the agency enters into and complies with the memorandum of understanding.~~

~~(4) The governor is strongly encouraged to deny federal funding for prevention, intervention, and treatment programs to any state agency that fails to enter into and comply with a memorandum of understanding as described in subsection (2) of this section.~~

~~(5) Beginning July 1, 2001, the office of legislative legal services shall annually review all bills enacted during a regular or special legislative session and identify any bills that appear to create a prevention, intervention, and treatment program in a state agency other than the division. The office of legislative legal services shall notify the division in writing of the enactment of such bill. Upon receipt of such notice, the division shall determine whether the identified program meets the criteria for a prevention, intervention, and treatment program adopted by rule of the state board of health. If the division determines based on such criteria that the program is a prevention, intervention, and treatment~~

~~program, it shall notify in writing the state agency in which the program is created of the requirements of this section.~~

~~(6) (a) The executive director shall meet at least annually with the governor, or his or her designee, and with the executive directors specified in paragraph (b) of this subsection (6) to review the activities and progress of the division and its interaction with the prevention, intervention, and treatment programs provided by other state agencies. The purpose of the meetings shall be to identify and streamline the prevention, intervention, and treatment programs operated by state agencies, as appropriate to achieve greater efficiencies and effectiveness for the state, for local communities, and for persons receiving services.~~

~~(b) The following executive directors shall attend the meetings required under this subsection (6):~~

~~(I) (Deleted by amendment, L. 2002, p. 222, § 2, effective April 3, 2002.)~~

~~(II) The commissioner of education;~~

~~(III) and (IV) (Deleted by amendment, L. 2002, p. 222, § 2, effective April 3, 2002.)~~

~~(V) The executive director of the department of human services;~~

~~(VI) and (VII) (Deleted by amendment, L. 2002, p. 222, § 2, effective April 3, 2002.)~~

~~(VIII) The executive director of the department of public safety; and~~

~~(IX) The executive director of the department of transportation.~~

**SECTION 8.** In Colorado Revised Statutes, **repeal** 25-20.5-108 as follows:

**25-20.5-108. Prevention, intervention, and treatment program**

**requirements - reports - reviews - annual review summary.** ~~(1) Each state agency that operates a prevention, intervention, and treatment program, as identified by the division based on criteria adopted by rule of the state board of health, annually shall submit to the division the following information:~~

~~(a) The name of, statutory authority for, and funding source for each prevention, intervention, and treatment program operated by the state agency;~~

~~(b) The parameters of each prevention, intervention, and treatment program, including but not limited to the specific, measurable outcomes to be achieved by each prevention, intervention, and treatment program;~~

~~(c) The entities that are receiving funding through each prevention, intervention, and treatment program operated by the state agency, the amount awarded to each entity, and a description of the population served and prevention, intervention, and treatment services provided by each entity.~~

~~(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), each state agency using state or federal moneys to fund local prevention and intervention programs shall submit an annual report concerning these programs to the division. The state board of health by rule shall specify the time frames, procedures, and form for submittal of the report and the information to be included in the report, which at a minimum shall include:~~

~~(I) A description of the prevention, intervention, and treatment program, including but not limited to the population served, the prevention, intervention, and treatment services provided, and the goals and specific, measurable outcomes to be achieved by the prevention,~~

~~intervention, and treatment program;~~

~~(II) Evidence of the prevention, intervention, and treatment program's progress in meeting its stated outcomes and goals during the preceding fiscal year and in previous fiscal years, depending on how long the prevention, intervention, and treatment program has been in operation;~~

~~(III) The sources from which the prevention, intervention, and treatment program receives funding and the amount received from each source;~~

~~(IV) A list of any entities that are collaborating in the delivery of prevention, intervention, and treatment services through the program.~~

~~(b) If a community-based prevention, intervention, and treatment program is required to submit an annual report that is comparable to the report described in paragraph (a) of this subsection (2) to a state agency other than the division, the state agency, in lieu of submittal of a report by the prevention, intervention, and treatment program as required in paragraph (a) of this subsection (2), shall forward a copy of the comparable report to the division in accordance with rules adopted by the state board of health. If a forwarded report does not include all of the information specified in paragraph (a) of this subsection (2), the division shall obtain such information directly from the community-based prevention, intervention, and treatment program.~~

~~(3) (a) The division, in accordance with the time frames adopted by rule of the state board of health, but at least every four years, shall review, or cause to be reviewed under a contract entered into pursuant to subsection (5) of this section, each state and community-based prevention, intervention, and treatment program operated within this state~~

~~that receives state or federal funds. The division may establish a schedule for the review of prevention, intervention, and treatment programs pursuant to this subsection (3). The review shall be designed to determine whether the prevention, intervention, and treatment program is meeting its identified goals and outcomes and complying with all requirements of the agency overseeing the operation of the prevention, intervention, and treatment program and the applicable rules adopted by the state board of health pursuant to this article.~~

~~(b) If the division determines that a community-based prevention, intervention, and treatment program is not meeting or making adequate progress toward meeting the outcomes specified for the program or is otherwise failing to comply with statutory or regulatory requirements, the division shall revoke the grant issued to the program, if it was issued by the division, or recommend revocation to the state agency that issued the grant. The entity operating any program for which the grant is revoked may appeal as provided in the "State Administrative Procedure Act", article 4 of title 24, C.R.S.~~

~~(c) If the division determines that a state-operated prevention, intervention, and treatment program is not meeting or making adequate progress toward meeting the outcomes specified for the prevention, intervention, and treatment program or is otherwise failing to comply with statutory or regulatory requirements, the division shall recommend to the governor or to the general assembly, whichever is appropriate, that the prevention, intervention, and treatment program cease receiving state or federal funding.~~

~~(4) The division shall receive a percentage, as determined by rule, of the operating cost of each state prevention, intervention, and treatment~~

~~program reviewed pursuant to this section to offset the costs incurred by the division in performing such review.~~

~~(5) The division may contract with one or more public or private entities to conduct the reviews of prevention, intervention, and treatment programs and assist in preparing the annual executive summary report as required in this section.~~

~~(6) The division shall annually prepare or oversee the preparation of an executive summary of the prevention, intervention, and treatment program reviews conducted during the preceding year and submit such summary to the governor, to each state department that operates a prevention, intervention, and treatment program, and to each entity that received state or federal funds for operation of a prevention, intervention, and treatment program during the fiscal year for which the summary is prepared. In addition, the division shall provide copies of the summary to any person upon request.~~

**SECTION 9.** In Colorado Revised Statutes, **repeal** 25-20.5-109 as follows:

**25-20.5-109. Programs not included.** ~~(1) Notwithstanding any other provisions of this article 20.5 to the contrary, the following programs are not subject to the requirements of this article 20.5:~~

~~(a) Any juvenile programs operated by the division of youth services in the department of human services;~~

~~(b) Any program operated for juveniles in connection with the state judicial system;~~

~~(c) Any program pertaining to out-of-home placement of children pursuant to title 19, C.R.S.~~

**SECTION 10. Act subject to petition - effective date.** This act

takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

DRAFT
2.25.19

**DRAFT**

LLS NO. 19-0122.01 Kristen Forrestal x4217 **COMMITTEE BILL**

**Statutory Revision Committee**

**BILL TOPIC:** "CDPHE Hospital License Requirements"

## A BILL FOR AN ACT

**CONCERNING THE MANDATORY CONTENTS OF EACH LICENSE ISSUED TO A HOSPITAL BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.**

### Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/.)*

**Statutory Revision Committee.** The bill repeals language requiring each hospital license issued by the department of public health and environment to include the signature of the president of the state board of health (state board), the attestation of the secretary of the state board, and the state board's seal.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** The general assembly declares that the purpose of this act is to repeal obsolete statutory provisions within the Colorado department of public health and environment. The general assembly further declares that repealing these statutory provisions does not alter the scope or applicability of the remaining statutes.

**SECTION 2.** In Colorado Revised Statutes, 25-3-102, **amend** (1)(d) as follows:

**25-3-102. License - application - issuance - certificate of compliance required.** (1) (d) ~~The license shall be signed by the president and attested by the secretary of the state board of health and have the state board's seal affixed to the license.~~ The license expires one year from the date of issuance.

**SECTION 3. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

DRAFT
2.25.19

**DRAFT**

LLS NO. 19-0384.01 Kristen Forrestal x4217 **COMMITTEE BILL**

**Statutory Revision Committee**

**BILL TOPIC:** "Statutory Revision Committee Annual Report"

**A BILL FOR AN ACT**

**CONCERNING A CHANGE IN THE DATE BY WHICH THE STATUTORY REVISION COMMITTEE IS REQUIRED TO REPORT ANNUALLY TO THE GENERAL ASSEMBLY.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/.)*

**Statutory Revision Committee.** Current law requires the statutory revision committee to report its findings and recommendations to the legislature on or before November 15 of each year. The bill requires the annual report to occur on or before July 1 of each year.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 2-3-902, **amend** (1)(e) as follows:

**2-3-902. Duties of committee.** (1) The committee shall:

(e) Report its findings and recommendations on or before ~~November 15~~ JULY 1 of each year to the legislature and, if it deems advisable, attach to its report copies of any proposed bills intended to carry out any of its recommendations.

**SECTION 2. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.